SUPREME COURT OF THE UNITED STATES.

No. 107.

THE NEW JERSEY STEAM NAVIGATION COMPANY, RESPONDENTS AND APPELLANTS,

vs.

THE MERCHANTS' BANK OF BOSTON, LIBELLANTS.

ON APPEAL FROM THE CIRCUIT COURT OF THE U. S. FOR THE DISTRICT OF R. ISLAND.

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THE MERCHANT'S BANK OF BOSTON, libellants,
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY, respondents.

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UNITED STATES OF AMERICA,
Rhode Island district, sc.

At a circuit court of the United States, holden at Providence for the first circuit, and within and for the Rhode Island district, on the fifteenth day of November, anno domini one thousand eight hundred and forty-three:

Present: The Hon. Joseph Story, asso. justice Sup. Court, U. S.
Hon. John Pitman, U. S. District Judge for R. I. Dis't.
Richard W. Greene, esq., " attorney "
Sylvester Hartshorn, esq., " marshal "
John T. Pitman, Clerk of the circuit court.

In the record of the proceedings of said court, among others are the following, to wit:

MERCHANTS' BANK OF BOSTON, libellants,
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY, respondents.

Be it remembered that, heretofore, to wit, on the fifteenth day of November, in the year of our Lord eighteen hundred and forty-three, the said libellants, by their solicitors, Richard W. Greene, James W. Clarke, and Charles F. Tillinghast, esquires, filed in court here a transcript of the records from the district court for said district, as follows:

"Be it remembered that heretofore, to wit, on the tenth day of Feb-"ruary, 1842, the Merchants' Bank of Boston, by their solicitors, filed "in the district court the following libel, to wit:

UNITED STATES OF AMERICA,
Rhode Island district, sc.

To the honorable John Pitman, judge of the district court of the United States within and for the district of Rhode Island.

The libel and complaint of the President, Directors and Company of the Merchants' Bank of Boston, a corporation incorporated by the legislature of the commonwealth of Massachusetts against the New Jersey Steam Navigation Company, a corporation incorporated by the legislature of the State of New Jersey, owners of the steamboat Lexington, for a cause of bailment, civil and maritime:

And thereupon the said President, Directors and Company of the Merchants' Bank of Boston, do allege and articulately propound, as follows:

First. That the respondents, in the month of January, in the year of our Lord one thousand eight hundred and forty, were common carriers of merchandise on the high seas from the city of New York, in the State of New York, to Stonington, in the State of Connecticut, and were then owners of the steamboat Lexington, then lying at the port of New York, in the State of New York, and which vessel was then used

by the respondents as common carriers as aforesaid for the transportation of goods, wares, and merchandise on the high seas from the said port of New York to the said port of Stonington, in the State of Connecticut.

Second. That the complainants, on the high seas, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States and of this court, on the thirteenth day of January, A. D. 1840, contracted with the respondents for the transportation, by water, on board of the said steamboat Lexington, from the said port of New York to the said port of Stonington, of certain gold coin, amounting to fourteen thousand dollars, and of certain silver coin, amounting to eleven thousand dollars, to the libellants belonging; and the said respondents then and there, for a reasonable hire and reward, to be paid by the libellants therefor, contracted with the libellants that they would receive said gold coin and silver coin on board of the said steamboat Lexington, and transport the same therein on the high seas, from said New York to said Stonington, and safely deliver the same to the libellants.

Third. That the libellants, on the said thirteenth day of January, A. D. 1840, at said New York, delivered to the said respondents on board of the said steamboat Lexington, then lying at said New York, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States and of this court, and the respondents then and there received on board of said steamboat the said gold coin and silver coin for the purpose of transporting the same by water on the high seas from said New York to said Stonington, and to deliver the same to the libellants as aforesaid.

Fourth. That the steamboat Lexington sailed from said port of New York with the said gold coin and silver coin on board on said thirteenth day of January, A. D. 1840, and bound to said port of Stonington; yet the respondents, their officers, servants and agents, so carelessly and improperly stowed the said gold coin and silver coin, and the engine, furnace, machinery, furniture, rigging, and equipments of the said steamboat were so imperfect and insufficient, and the said respondents, their officers, servants and agents, so carelessly, improperly and negligently managed and conducted the said steamboat Lexington during her said voyage, that by reason of such improper stowage, imperfect and insufficient engine, furnace, machinery, furniture, rigging and equipments, and of such careless, improper and negligent conduct, the said steamboat, together with the said gold coin and silver coin to the libellants belonging, were destroyed by fire on the high seas, and wholly lost.

Fifth. That by reason of the destruction of the said steamboat Lexington, and of the said gold coin and silver coin, the libellants have sustained damage to the amount of twenty-five thousand dollars.

Sixth. That the said New Jersey Steam Navigation Company are possessed of certain personal property within the said Rhode Island district, and within the ebb and flow of the sea, and within the maritime and admiralty jurisdiction of this court, to wit, of the steamboat called

the Massachusetts, her tackle, apparel, furniture and appurtenances, and of other personal property.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this court, in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proof to be by them exhibited in the cause. Wherefore, the libellants pray that process, in due form of law, according to the course of admiralty and of this court in causes of admiralty and maratime jurisdiction, may issue against the respondents, and against the said steamboat Massachusetts, her tackle, apparel, furniture and appurtenances, or any other property to the respondents belonging within the said Rhode Island district; and that the said property, or any part thereof, may be attached and held to enforce the appearance of the respondents in this court, to answer the matters so articulately propounded, and to answer the damages which may be awarded to the libellants for the causes aforesaid; and that this court would be pleased to pronounce for the damages aforesaid, and to decree such damages to the libellants as shall to law and justice appertain.

The President, Directors and Company of the Merchants' Bank of Boston, by their proctors.

GREENE & CLARKE, and
CHAS. F. TILLINGHAST.

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, DISTRICT COURT,
At Providence, February 10, 1842.

Then personally appeared James M. Clark, one of the proctors of the Merchants' Bank of Boston, and made oath that the facts and statements in the foregoing libel were true according to the best of [his] knowledge and belief. Before me,

JOHN T. PITMAN, *Clerk.*

Order.

February 10, 1842.—Allowed, and let a monition issue to the said New Jersey Steam Navigation Company, and an attachment issue against the property of said company, to be found in the Rhode Island district, returnable to a special district court, to be holden at Providence, in said district, at the district court room, on Saturday, the 26th day of February instant, at 10 o'clock, A. M.

JOHN PITMAN,
District Judge, Rhode Island district.

Whereupon was issued the following *warrant of attachment and monition:*

RHODE ISLAND DISTRICT, *sc.*

[L. S.] The President of the United States of America, to the marshal of said district, or to his deputy, greeting:

Whereas a libel hath been preferred to the hon. John Pitman, judge

of the United States, within and for the Rhode Island district, wherein the President, Directors and Company of the Merchants' Bank of Boston, a corporation incorporated by the legislature of the commonwealth of Massachusetts, are libellants, against the New Jersey Steam Navigation Company, a corporation incorporated by the legislature of the State of New Jersey, owners of the steamboat Lexington, in a case of bailment, civil and maritime, in the words following, to wit:

First. That the respondents, in the month of January, in the year of our Lord one thousand eight hundred and forty, were common carriers of merchandise on the high seas, from the city of New York, in the State of New York, to Stonington, in the State of Connecticut; and were the owners of the steamboat Lexington, then lying at the port of New York, in the State of New York; and which vessel was then used by the defendants as common carriers as aforesaid, for the transportation of goods, wares and merchandise on the high seas, from the said port of New York to the port of Stonington, in the State of Connecticut.

Second. That the complainants on the high seas, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States and of this court, on the thirteenth day of January, A. D. 1840, contracted with the respondents for the transportation, by water, on board of the said steamboat Lexington, from the said port of New York to the said port of Stonington, of certain gold coin, amounting to fourteen thousand dollars, and of certain silver coin, amounting to eleven thousand dollars to the libellants belonging.

And the said respondents then and there, for a reasonable hire or reward, to be paid by the libellants therefor, contracted with the libellants that they would receive said gold coin and silver coin on board of the said steamboat Lexington, and transport the same therein on the high seas, from said New York to said Stonington, and safely deliver the same to the libellants.

Third. That the libellants, on the said thirteenth day of January, A. D. 1840, at said New York, delivered to the said respondents, on board of the said steamboat Lexington, then lying at said New York, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States and of this court, and the respondents then and there received on board of the said steamboat the said gold coin and silver coin, for the purpose of transporting the same by water on the high seas from said New York to said Stonington, and to deliver the same to the libellants aforesaid.

Fourth. That the said steamboat Lexington sailed from said port of New York, with the said gold coin and silver coin on board, on said thirteenth day of January, 1840, and bound to said port of Stonington. Yet the respondents, their officers, servants, and agents, so carelessly and improperly stowed the said gold coin and silver coin, and the engine, furnace, machinery, furniture, rigging and equipments of the said steamboat were so imperfect and insufficient, and the said respondents, their officers, servants and agents, so carelessly, improperly and negligently managed and conducted the said steamboat Lexing-

ton during her said voyage, that by reason of such improper stowage, imperfect and insufficient engine, furnace, machinery, furniture, rigging and equipments, and of such careless, improper and negligent conduct, the said steamboat, together with the gold coin and silver coin to the libellants belonging, were destroyed by fire on the high seas, and wholly lost.

Fifth. That by reason of the destruction of the said steamboat Lexington, and of the said gold coin and silver coin, the libellants sustained damage to the amount of twenty-five thousand dollars.

Sixth. That the said New Jersey Steam Navigation Company are possessed of certain personal property within the said Rhode Island district, and within the ebb and flow of the sea, and within the admiralty and maritime jurisdiction of this court, to wit, of the steamboat Massachusetts, her tackle, apparel, furniture and appurtenances, and of other personal property.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proof to be by them exhibited in the cause.

And whereas the libellants having prayed that process in due form of law, according to the course of courts of admiralty and of this court in causes of admiralty and maritime jurisdiction, may issue against the respondents, and against the said steamboat Massachusetts, her tackle, apparel, furniture and appurtenances, or any other property to the respondents belonging within the said Rhode Island district; and that the said property, ar any part, may be attached and held to enforce the appearance of the respondents in this court to answer the matters so articulately propounded, and to answer the damages which may be awarded to the libellants for the causes aforesaid; and our said judge having allowed said libel, and ordered monition to issue for the purposes in said libel mentioned, and an attachment to be served:

You are, therefore, hereby commanded to attach the said steamboat Massachusetts, her tackle, apparel, furniture and appurtenances, or any other property to the said respondents belonging, within the said Rhode Island district, and to cite the New Jersey Steam Navigation Company by serving this monition upon Moses B. Ives, one of the directors thereof, and upon William Comstock, the agent thereof, to appear at a special district court, to be holden at Providence, in said district, at the district court room, on Saturday, the twenty-sixth day of February instant, at 10 o'clock, A. M., to make true answers to all and singular the matters so articulately propounded, and to shew cause, if they see fit, why a decree should not issue against them as prayed for in said libel.

All which to be done fourteen days before said court. Hereof fail not, but true return make of the warrant, with your doings by virtue hereof.

Witness the honorable John Pitman, our district judge at Providence, this tenth day of February, A. D. 1842.

JOHN T. PITMAN, *Clerk.*

Marshal's return.

UNITED STATES OF AMERICA,
Rhode Island district, ss.

PROVIDENCE, *February* 10, 1842.

By virtue of this warrant I have this day, at fifteen minutes past four o'clock, P. M., attached the steamboat Massachusetts, her tackle, apparel, furniture and appurtenances, and have cited the said New Jersey Steam Navigation Company, by serving this monition upon Moses B. Ives, one of the directors thereof, and upon William Comstock, the agent thereof, to appear, if they see fit, as within required, and have left with the said Moses B. Ives and William Comstock each, a true and attested copy of this warrant, &c., with my return and attachment thereon, they being in possession of the said steamboat.

SYLVESTER HARTSHORN,
U. S. Marshal.

Fees:

3 services	$6 00
3 copies	6 00
Custody 3 days before bail given	4 50
	$16 50

Agreement for answer and commissioner.

In the case—MERCHANTS' BANK,
vs.
NEW JERSEY ST. NAV. CO.

Dist. Ct. U. S., R. I. Dist., April 15, 1842.

It is agreed in the above case that the answer shall be filed on or before the 15th day of May next; that Joseph W. Bridgham be appointed to take proof therein; and that proof may be taken by either party in the mean time, and before the coming in of the answer; and that the proof be closed on or before the 15th of October next.

SAML. AMES, *for libellees.*
R. W. GREENE, *Proctor for libellant.*

Answer of the New Jersey Steam Navigation Company.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

District Court of the United States.

To the honorable district court of the United States, within and for the district of Rhode Island.

And now the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said

State of New Jersey, owners of the late steamboat Lexington, appear before this honorable court, and for answer to the libel and complaint of the President, Directors and Company of the Merchants' Bank of Boston, against them, the said New Jersey Steam Navigation Company, allege and articulately propound, as follows:

First. That the respondents were legally incorporated by the legislature of the State of New Jersey, established and transacting business in Jersey City, in the district of New Jersey, and on the thirteenth day of January, A. D. one thousand eight hundred and forty, were then, and long before, the owners of the late steamboat Lexington, then lying in the port of New York, which vessel was, and long before had been, used by these respondents for the transportation of passengers, and goods, wares and merchandise, and other property, on the high seas, to wit, between the port of New York, in the district of New York, and the port of Stonington, in the district of Connecticut.

Second. That the said libellants did not contract with these respondents, or with the agents, officers or servants of these respondents at said port of New York, on the said thirteenth day of January, A. D. one thousand eight hundred and forty, or at any other time or place, for the transportation, by water, on board of the said steamboat Lexington, or any other vessel, of the said gold and silver coin in said libel mentioned, for the libellants, from the said port of New York, or any other port, to said port of Stonington, or any other port; and that these respondents did not, nor did any or either of their agents, officers or servants, for a reasonable hire or reward, to be paid by the said libellants, or otherwise contract with the said libellants, or with any person in their behalf, to receive the said gold and silver coin in the said libel mentioned, or any other gold and silver coin on board of the said steamboat Lexington, or to transport the same, or any part thereof, in the said steamboat, or in any other manner, from the said port of New York to the said port of Stonington; nor have these respondents, their agents, officers or servants, made any other contract or agreement with the said libellants in regard to the said gold and silver coin.

Third. That the said libellants did not deliver on board of the steamboat Lexington aforesaid, on said thirteenth day of January, A. D. one thousand eight hundred and forty, or at any other time, at said New York, or any other place, to these respondents, or to any or either of the agents, officers or servants, of these respondents, the said gold and silver coin in said libel mentioned, for the purpose of having the same transported by water on the high seas, from said port of New York to said port of Stonington, or for any other object or purpose whatsoever; nor did they so deliver to these respondents, their agents, officers or servants, any other gold and silver coin, or any other property whatsoever; nor did these respondents, or any or either of their agents, officers or servants, on the day and year and at the place last mentioned, receive from the said libellants, or any other person or persons, the said gold and silver coin in the said libel mentioned, or any other coin or property for any purpose whatever; nor have the said libellants ever

exhibited or presented to these respondents, their officers or agents, any bill of lading, receipt or memorandum in writing, of the said gold and silver coin, or of any other gold and silver coin, or any other property whatsoever, on board the said steamboat, to be transported and delivered as aforesaid.

Fourth. That all goods received on board of said steamboat Lexington on said thirteenth day of January, A. D. one thousand eight hundred and forty, by virtue of contracts with the officers or agents of said New Jersey Steamboat Navigation Company, were received by the officers, agents or servants, of these respondents "to be transported from said port of New York to said port of Stonington, by water, and there to be delivered to the agent of the New York, Providence and Boston Railroad Company, or assigns, dangers of fire, water, breakage, leakage, and all other accidents excepted;" and also under a printed notice that the said New Jersey Steam Navigation Company were to be held responsible for ordinary care and diligence only in the transportation of merchandise and other property, shipped or put on board the said steamboat Lexington; and also under a notice to all shippers and consignees, that all goods, freight, baggage, bank-bills, specie, and every other kind of property, taken, shipped, or put on board of the steamers of the New Jersey Steam Navigation Company, were at the sole risk of the owners thereof.

Fifth. That the usage and custom of the business of said company in carrying goods and merchandise, and other property, on board of the boats of their said line had been for a long time previous, and was, on the said thirteenth day of January, A. D. one thousand eight hundred and forty, that they were to be held responsible for ordinary care and diligence only in the transportation of such goods, merchandise, and other property so shipped; which said custom and usage was well known to the said libellants at the time of said shipment by them alleged to have been made on board the said steamboat Lexington, and generally to all persons shipping goods on board the steamers of said New Jersey Navigation Company, and which said custom and usage entered into, and made a part of, all contracts of shipment made with said company by those shipping merchandise and other property on board the steamers of said company.

Sixth. That the printed paper marked "A," hereto annexed, is a true and exact copy of the printed form of all bills of lading given by the masters of all steamboats then belonging to these respondents, and then and for a long time before running and plying between the said port of New York and the said port of Stonington; all which these respondents believe was well known to the libellants; and that such bills of lading, and such only, were given all persons who shipped or put on board of their steamboats goods, wares and merchandise, or any other property, to be transported from said port of New York to said port of Stonington, or to any other port or place.

Seventh. That the printed paper marked "B," hereto annexed, is a true and exact copy of a printed notice which, as these respondents

believe, was posted up in two of the most public places on board said steamboat Lexington, on the said thirteenth day of January, A. D. one thousand eight hundred and forty, and also on the wharf at which she lay, and in the office of the company in the city of New York, and had been long before that time so posted as aforesaid; of all which these respondents believe the said libellants had full notice at the time of said shipment by them alleged to have been made on board the said steamboat Lexington.

Eighth. That said steamboat Lexington sailed from said port of New York for said port of Stonington, on said thirteenth day of January, A. D. one thousand eight hundred and forty, and in a few hours thereafter and before her arrival at said port of Stonington, the said steamboat Lexington, and the whole of her cargo on board, was accidentally destroyed by fire.

Ninth. That these respondents expressly deny that the said corporation, their officers, agents or servants, carelessly or improperly stowed the cotton, or any other articles of freight, on board of the said steamboat Lexington; that the engine, machinery, furniture, rigging or equipments of the said steamboat Lexington were imperfect and insufficient; or that the said corporation, their officers, agents or servants, carelessly, improperly or negligently managed and conducted the said steamboat Lexington during the said voyage on her way from the said port of New York for said port of Stonington; or that, by reason of improper stowage, improper and insufficient engine, machinery, rigging and equipments, or of careless, improper and negligent conduct, the said steamboat Lexington, and the said gold and silver coin, or any other property, was destroyed by fire on the high seas and wholly lost. But, on the contrary, these respondents aver and verily believe, that the cotton, and all other articles of freight on board the said steamboat, were carefully, properly and judiciously stowed; that the engine, machinery, furniture, rigging and equipments of the said steamboat Lexington were good, substantial and sufficient; and that the said corporation, their officers, agents and servants, carefully, properly, skilfully and judiciously managed and conducted the said steamboat Lexington during the said voyage; and that her loss and the loss of her cargo on board was alone to be attributed to one of those accidents against which no human skill or foresight could guard. And these respondents further aver and verily believe that the said corporation had complied with all the requirements and performed all the duties required and enjoined upon them by the provisions of an act, entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam," approved the seventh day of July, A. D. one thousand eight hundred and thirty-eight, and obtained from the inspectors, appointed under the provisions of said act, the certificate thereby provided for; a true copy whereof is hereunto annexed, marked C.

Tenth. That all and singular the premises are true, in verification whereof, if denied, these respondents crave leave to refer to the depositions and other proof to be by them exhibited in this cause.

Wherefore these respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in cost, and otherwise right and justice to administer in the premises.

CH. OVERING HANDY,
[L. s.] *Pres't N. J. Steam Navigation Company.*
SAML. AMES, and
JOHN WHIPPLE,
Proct'rs for resp.

Paper A, referred to in answer.

NEW JERSEY STEAM NAVIGATION COMPANY.

Received of on board the steamer
master
marked and numbered as in the margin, to be transported to
and there to be delivered to
or assigns, danger of fire, water, breakage, leakage, and all other accidents excepted; and no package whatever, if lost, injured or stolen, to be deemed of greater value than two hundred dollars.

Freight, as customary with the steamers on this line.

N. B. The company are to be held responsible for ordinary care and diligence only in the transportation of merchandise, and other property, shipped or put on board the boats of this line.

Dated at the 18

(Contents unknown.)

master.

Paper B, referred to in answer.

NOTICE TO SHIPPERS AND CONSIGNEES.

All goods, freight, baggage, bank bills, specie, or any other kind of property, taken, shipped or put on board the steamers of the New Jersey Steam Navigation Company must be at the risk of the owners of such goods, freight, baggage, &c., and all freight consisting of goods, wares and merchandise, or any other property, landed from the steamers, if not taken away from the *warf* without delay, will be put under cover at the risk of the owners of said goods, freight, baggage, &c., in all respects whatsoever.

Paper C, referred to in answer.

Copy of the original.—Steamboat Inspection Certificate—No. 27.

In pursuance of an act of Congress, entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam. Passed July 7, 1838.

We, *Elihu S. Bunker* and *John Clark*, inspectors appointed under the said act by the district judge of the United States, for the southern district of New York,

Do hereby certify, that we have, at the date hereof, inspected and thoroughly examined the *hull* of the steamboat or vessel called the Lexington, of N. York, Capt. J. H. Vanderbelt master; that the said boat or vessel was originally built at New York, in the State of New York, in the year 1836, and has been running 4 years, on the route between New York and Providence, for the transportation of freight and passengers, and in our opinion sound and in all respects sea-worthy, and fit for use on said route.

ELIHU S. BUNKER,
JOHN CLARK.

And we do FURTHER CERTIFY, that we have also inspected and thoroughly examined the *boilers* and *machinery* of the said boat or vessel; that the said boilers are 4 years old, made of iron materials, and in our opinion sound and fit for use—machinery in good order and fit for use.

In testimony whereof we have given this certificate, in duplicate, under our hands, at the city of New York, this 23d day of Sept., 1839.

ELIHU S. BUNKER,
JOHN CLARK.

Decree.

RHODE ISLAND DISTRICT, *sc.*

Special District Court, October 18, 1842.

MERCHANTS' BANK,
vs.
N. JERSEY STEAM NAVIGATION COMPANY. } In Admiralty.

And now, on hearing the said cause, the court, by consent of the parties, doth render, pro forma, the following decree:

It is ordered and decreed that the said libel be dismissed, and the same is hereby dismissed accordingly, with costs, for the respondents.

This done and promulged at Providence, in said district, this eighteenth day of October, A. D. 1842.

JOHN PITMAN,
District Judge U. S. for R. I. district.

Whereupon the libellants claim an appeal, which is allowed, bond to be given in the sum of two hundred dollars; and whereupon the following bond was filed.

Bond.

Know all men by these presents that we, Richard W. Greene, of Providence, as principal, and John Taylor, of North Kingston, as surety, are held and firmly bound unto the New Jersey Steam Navigation Company in the sum of two hundred dollars, to be paid to the said New Jersey Steam Navigation Company, or their assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at Providence, the fourteenth day of

November, in the year of our Lord one thousand eight hundred and forty-two.

The condition of this obligation is such, that whereas the President, Directors and Company of the Merchants' Bank of Boston have appealed a certain cause in admiralty, wherein said bank is libellant, and the said New Jersey Steam Navigation Company is respondent, in which a decree, pro forma, was rendered at a special term of the district court for the Rhode Island district, holden at Providence, on the 8th of November inst., from said district court to the circuit court of the United States for this district: Now, therefore, if the said Merchants' Bank shall prosecute said appeal to effect before said circuit court, or, in default thereof, shall pay all costs that it shall be adjudged to pay in the premises, then this obligation to be void, otherwise to remain in force and virtue.

R. W. GREENE, [L. S.]
JOHN TAYLOR. [L. S.]

Sealed, signed and delivered in presence of—the words "holden at Providence on the 8th November inst."

HENRY PITMAN.

Approved:
JOHN PITMAN,
Dist. Judge.

District clerk's certificate.

And the same being approved of, it is ordered, that a record of the proceedings aforesaid, with all things thereunto relating, be certified to the circuit court of the United States for the Rhode Island district, which is done accordingly.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 14th day of November, A. D. 1842.

JOHN T. PITMAN,
Clerk D. court R. I. district.

And at the November term of said circuit court, 1842, the following agreement was entered into, to wit:

RHODE ISLAND DISTRICT, *sc.*

Circuit Court U. S., Nov. term, 1842.

In the case—MERCHANTS' BANK
vs.
NEW JERSEY NAV. CO.

It is agreed by and between the parties in said case, that all depositions taken by either party, claimant against said New Jersey Navigation Company, on account of loss of the steamer Lexington, whether in the cases pending in the State courts of Rhode Island, or courts of the United States, or by the respondent or defendant in said cases, may, as far as applicable, be used on the trial of any of said cases in any court, in the same manner and with the same effect as if taken in that cause.

SAML. AMES, *pro def'ts.*
R. W. GREENE,
TILLINGHAST & BRADLEY,
pro compl't.

And said cause being continued from said term, and from term to term, sundry commissions are issued to take testimony on motion of the parties libellants and respondents; and the testimony taken under said commissions, together with such other as may be admitted under the foregoing agreement, being duly filed of record in said case, is hereunto annexed as part of the record of said cause, as follows, to wit:

Commission to Joseph Bridgham.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America, to Joseph Bridg-
[L. S.] ham, of the city and southern district of New York, esquire, and a citizen of the State of New York, greeting:

Know ye, that reposing confidence in your wisdom and fidelity, we have appointed, and by these presents do authorize and empower, you to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district.

And to this end, on certain days to be by you appointed for that purpose, to cause such witnesses, as shall be named to you by either party, to come before you, and each witness, when present before you, to examine carefully upon his oath or affirmation touching the premises; and when you shall have taken the examination of each witness, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence; and that when you shall have taken all the depositions requested, to send the same, under your hand and seal, together with this commission, and your return thereon, to our said court, or deliver the same in open court, next to be holden at Providence, on the fifteenth day of November next.

Before you proceed to act by authority of this commission, you engage yourself by oath or affirmation, before some magistrate or other person authorized to administer the same, to the faithful performance of the trust hereby reposed in you.

You are moreover required always to give the adverse party due notice of the time and place of taking any deposition by virtue hereof. Hereof fail not.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this thirteenth day of September, A. D. 1841.

JOHN T. PITMAN,
Clerk of circuit court for R. I. district.

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, Sept. 13, *A. D.* 1841.

Then personally appeared the within named Joseph Bridgham, and

made solemn oath that he would faithfully and impartially discharge the duties reposed in him by this commission, according to the best of his skill and understanding. Before me,

JOHN T. PITMAN, *Clerk.*

Circuit Court of the United States for the district of Rhode Island, in the first circuit.

JOHN H. CLARKE
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY.

Gents: You will please to take notice that I shall proceed to take the depositions of such witnesses as either party may request, to be used in the above entitled suit, by virtue of a commission issued out of the circuit court of the United States for the district of Rhode Island, and to me directed, at my office, number 25 Nassau street, on Tuesday, the twenty-sixth day of October instant, at 4 o'clock, P. M., at which time and place you are hereby notified to attend.

Yours, &c., JOSEPH BRIDGHAM.

Dated New York, Oct. 25, 1841.

To EMERSON & PRITCHARD, esqrs., of counsel for pl'ff.
GEO. R. J. BOWDOIN, esqr., of counsel for def'ts.

We hereby admit due service of the above notice.

G. R. J. BOWDOIN,
EMERSON & PRITCHARD.

Deposition of Dennis Tracy.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that on this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and forty-one, before me, Joseph Bridgham, a commissioner duly authorized under and by virtue of the annexed commission to take the deposition of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared Dennis Tracy, to testify and the truth to say, on the part and behalf of the plaintiff, in the above-mentioned matter.

And the said Dennis Tracy being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Dennis Tracy, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—What is your name, residence and occupation?

To the first interrogatory he saith—Dennis Tracy, of the city of New York. I reside at 216 Elizabeth street, and am a carman in the employ of Fearings & Hall. I have been in their employ for three years.

Second interrogatory—Did you, on the 13th of January, 1840, or about that time, deliver any bales of cotton at or near the steamboat Lexington—if yea, how many, and for whom?

To the second interrogatory he saith—I delivered 20 bales on the dock pier No. 1, the day on which the Lexington sailed on her last trip. I do not recollect the day of the month. I do not recollect the marks or the numbers on the bales, but I shipped them by direction of Messrs. Fearings & Hall. I took the cotton from the dock at the foot of Wall street. I had shipped 10 bales of the same lot on board the Providence a day or two previous. The bales I shipped on board the Lexington had been on the dock ever since the time I took the 10 bales to the steamer Providence; I shipped 20 bales by the Lexington.

Third interrogatory—How do you know that the 20 bales were shipped on board the Lexington?

To the third interrogatory he saith—As soon as the news of the burning of the Lexington came, I was sent by Messrs. Fearings & Hall down to where the Lexington lay, where I delivered them—to know if the cotton had been shipped. I was told by the agents that the goods had been taken on board. I saw nothing of them on the dock. The agent is Mr. Devoe, the man who was in the habit of giving bills of lading—(objected to by counsel as hearsay evidence.) The mate usually signed the memorandum, and I go to Mr. Devoe for the bill of lading. I do not recollect that I got a bill of lading for the cotton. The mate of the vessel, the first mate of the Lexington, received the cotton. I did not see it put on board, but the mate took charge of it. I do not know any thing about the stowing of the cotton on board the boat.

Fourth interrogatory—Did the mate give you to understand that the cotton should go in the Lexington?

To the fourth interrogatory he saith—No. He did not give me to understand anything about it.

Fifth interrogatory—Why, then, did you leave it with the mate?

To the fifth interrogatory he saith—I never ask him such questions when I ship goods. I only ask him to sign my memorandum. I cannot recollect whether or not he signed my memorandum in this case. Sometimes when you get down there late, they say they have to attend to passengers, and can't give you a bill of lading or memorandum. The bales were all there in season to be shipped by the Lexington; as near as I can recollect they were all there by 12 or 1 o'clock. I told the mate that they were to be shipped that day, and he received them for that purpose, and told me to pile them up by a pile of wood near the forward gangway of the boat.

Sixth interrogatory—Were you in the habit of shipping cotton by the Providence steamboats?

To the sixth interrogatory he saith—Only these two lots of cotton, but I have shipped other kind of goods.

Cross examination.

First cross interrogatory—You have said that all the cotton which you took to the Lexington was there between 12 and 1 o'clock—was this in time to get a bill of lading?

To the first cross interrogatory he saith—It was. They generally give bills of lading until 3 o'clock. The boats sailed at 4 o'clock, P. M.

Second cross interrogatory—What other goods besides these bales of cotton were laying at the dock at the foot of Wall street?

To the second cross interrogatory he saith—There were other bales of cotton there. I can't say whether there were other goods besides cotton on the dock.

Direct examination resumed.

First direct interrogatory—Did these 20 bales of cotton appear to be in good order?

To the first direct interrogatory he saith—They were in pretty good order—as good as usual.

Second direct interrogatory—If you received a bill of lading, what did you do with it?

To the second direct interrogatory he saith—If I got any, I took it to Fearings & Hall.

DENNIS TRACY.

Sworn before me, this 26th day of October, 1841, having been first read and subscribed by the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Frederick W. Hempstead.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that on this twenty-first day of February, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the deposition of such witnesses as either party may request to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared Frederick W. Hempstead, to testify and the truth to say on the part and behalf of the plaintiff in the above mentioned matter.

And the said Frederick W. Hempstead, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Frederick W. Hempstead, and he did thereupon depose, testify, and say as follows, viz:

First interrogatory—What is your name, residence and occupation?

To the first interrogatory he saith—Frederick W. Hempstead. My residence is at Brooklyn, Long Island. I am an engineer.

Second interrogatory—What have been your experience and means of acquiring knowledge respecting steam engines, machinery and steamboats, and how long and where have you been employed in connexion with them?

To the second interrogatory he saith—The first boat I went in was the steamboat Fanny, Captain Davidson, running to Norwich, Conn. I went as engineer. The next boat was the United States, on which I was three years as second engineer. Sometimes I had to perform the duties of first engineer, as he was often sick. The next boat was the General Jackson, a ferry boat running on the Jackson ferry. I was on board the boat as engineer. Henry Cook and myself took the boat in partnership. We took charge by turns. I staid there something better than a year. I next went on board the Independence up the North River. I was there as second engineer for several months. I then went on the Catharine ferry as second engineer, under Mr. McFarland, as first engineer. When Mr. McFarland was not there, or was sick, I had the charge of the boat, and took charge of all the work that was done on the boat constantly. I was there several years—I think as much as six or seven, but cannot state with certainty. I then went to Mr. George Burbeck's shop, in Brooklyn, to work. He is a steam engine builder. I went there to work the engine, to run the driving engine. I don't exactly know how long I was there, but I think about two months, when I went again on the Catharine Ferry. I staid there on the Catharine Ferry that winter until about April, when I was taken sick for about six weeks. I then went on board the Sandusky, running between Albany and New York, as chief engineer. I was there through the summer, until about the latter part of September—it might have been a little later. Then Mr. Rodney wanted me to go as second to him in the Constellation. I went, and was with him until the next March. I was also first engineer on board the David Brown somewhere near ten months; and also on board the William Gibbons as second engineer, for some time. The David Brown and William Gibbons were running from New York to Charleston. I have been constantly at work in the same way on board steamboats, in steam engine factories, and ferry boats, until the present time—so that I have been familiar with steam engines ever since I was fifteen years old.

Third interrogatory—Did you ever go as engineer in the steamer Lexington, and if so, when?

To the third interrogatory he saith—Yes, sir; I went, I think, on the

trip immediately before, or the trip but one before, she was burnt—I do not exactly recollect which. I was at work for Mr. Secor, when my brother Courtland Hempstead, who was chief engineer of the Lexington, came after me to Mr. Secor's shop, and wished me to go that trip in his place, and wished me [to] take five boiler-makers to repair the boiler when we got to Stonington.

Fourth interrogatory—When you were acting as engineer as above stated, what did you observe respecting the machinery, boilers and furnaces of the Lexington, and what fuel did she burn, and what was the arrangement of her engine, boiler and furnaces, as compared with other boats?

To the fourth interrogatory he saith—She burned coal and wood; she kindled with wood; she had a good, powerful engine. It was not a square engine—it was a beam engine. The boiler was, I think, 17 by 18, but I cannot exactly tell. The height of the boiler, from the legs up, was ten feet, and the steam chimney nine feet from the top of the shell. She had two furnaces and four arches. The distance between the boiler and ceiling on the side of the boat was so narrow that I had to turn myself sideways to get along through it. The draft, when the blower was on, was stronger than when it was off, but without a blower it was strong enough. I never wanted a blower when I run her. I could carry from 17 to 21 inches without the blower. When the blower was on, and there was a body of coal, it drove the heat very much on to the arches and burnt them out. This was the occasion for the repairs which I went to Stonington to put on to her. She had two blowers of the ordinary size, about 22 or 24 inches. I never measured them. I put on thirteen patches on the arches over the furnace, at Stonington. They were put on with tap-bolts, not screw bolts. There was no sheet iron under the legs—there were pans under the front legs; after the bridge wall—that is, above the legs, there was sheet iron, and one thickness of bricks. After the Lexington made her first trip, after being altered for coal, I took out the sheet iron by order of Mr. Secor, for whom I worked at that time. I did not myself approve of the alteration. I put the sheet iron back according to his order, although I did not approve of it. The repairs were made with the old sheet iron under the boiler; I sheared off the bad places and used the best of it. It was in a very bad state. The pieces were not rivetted on, but were fastened on with tap bolts, which are much less secure. In making these alterations, we used common red brick—no fire brick about them. The grate bars were raised to the height, the same height as the sheet iron work; the object was to increase the draft, and bring the fire nearer the boiler. We built up a new bridge wall. We built it of common red brick—some were new, and some were old. The thickness of the wall was the length of one brick. I should judge that the wall was about four feet high. I cannot recollect the measurement as accurately as when I before testified. It was then fresh in my memory. The new bridge wall was more than two feet higher than the old bridge wall that they used to burn wood with; but when I altered it, I raised it

about eight inches. The bridge wall is indicated by the letter "A" of the drawing hereunto annexed, marked exhibit "B"—the back end of the grate bars rested on that. The space between the letters "*B*" and "*C*," in the same exhibit, mark the place where the sheet iron work was. The sheet iron work was about twelve or thirteen feet in length. After the alteration I went in the boat as engineer. She worked well with a light head of steam, about five or six inches—anything over that made her shake. The blowers were driven from the line shaft; when the wheel made sixteen or seventeen turns in a minute, the blowers made six hundred or seven hundred, according to the tightness of the belt. I never thought the Lexington was a very fast boat—I don't think she would average more than thirteen miles an hour, through the sound. I did think she was fast until I went in her. When the Lexington first commenced running, and every thing was tight and strong, I suppose she could run very fast; but after she had run one summer with the John W. Richmond, they had to have a new air-pump put in her. She broke her pillow-block—she broke her strap on the starboard side, which connects to the connecting rod to the end of the beam; she labored wonderfully when she was driven—she was strained and pulled very much by this mode of running her. She was full of cotton when I went in her—(objected to by counsel for the defendants.) The railroad cars were in front, and the cotton was stowed from her bulk-head over the boiler, chock aft—a passage of about two feet being left on each side. The cotton was clear up to the steam-chimney, and stowed aft at the after part of the shaft—(counsel for the defendants objects in time to any evidence respecting the lading of the Lexington on any other trip excepting the one on which she was lost.) The boiler was covered with pine carlines—the carlines were swept out so as to fit the top of the boiler, and rested upon it—then there was a pine deck or shutters laid upon it, and the shutters were covered with copper on the upper side. This is what is usually called the boiler deck. The combings of the hatches were from three to six inches—certainly not over six inches. The heat of the furnace with the blowers on was enough to melt any piece of iron, ten or fifteen inches solid. When the blowers were on and the furnace was lighted up, a man could not look into the furnace door without burning his face. Blast furnaces are commonly lined with fire brick. I never knew one, excepting that of the Lexington, that was lined with common brick.

Adjourned by consent of parties to Wednesday, February 23d, at 3 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

February 23d, 1842.—At the time and place of adjournment, personally appeared before me, the above named Frederick W. Hempstead, to testify and the truth to say on the part and behalf of the plaintiff in the above mentioned matter; and the examination of the said Frederick W. Hempstead was continued as follows, viz:

The bridge wall of the Lexington was laid with common brick in fire sand—it makes a stronger wall as to fire than mortar, but not so strong as against the blower, for it will dry and blow out. The top part of the bridge wall was exposed to a strong heat. When I was in the boat, the fire would melt the iron, and make a clinker of the common brick. The upper part of the bridge wall was melted down—the top part of it—on the trip when I was in the boat, and at the time she arrived in Stonington. There was not sufficient heat under the grate bars to occasion fire, unless the bridge wall was thrown down and the blowers drove the fire through. When the blowers were on, they drove the fire up hard against the bridge wall. I have known the bridge wall of the Lexington to be thrown down by the blowers, as I believe. I know of nothing else that could break it down but the blowers. When the bridge wall was broken down, the bricks were thrown out in a heap beyond it, like any other wall. The lower part of the bridge wall was exposed to the water about the thickness of a brick—from there being water in the ash pans; sometimes the water would spatter in, when it was thrown in—if it was thrown in violently, it might go against the bridge wall or the pan. The common brick will take in more water than the fire brick, and the water will weaken and not the brick. The bridge wall was not strengthened by bolts or iron—it had nothing to support it but the bricks themselves. The affidavit, a copy of which is hereunto annexed, marked schedule "C,"—sworn the 28th of January, 1840, before Joseph Strong, commissioner of deeds, being read to the witness, he states that the same is correct, excepting that in coming from Stonington to New York, the blowers were not used—the spur wheel broke down as we were backing out of the dock. The affidavit is the original affidavit made by me about a fortnight after the loss of the Lexington.

(The defendants' counsel objects in time to the affidavit of Mr. Hempstead, taken before Joseph Strong, on the 28th day of January, 1840, being received in evidence or made a part of his examination in this case, the same having been taken ex parte. That the witness ought to be examined in detail by the plaintiff, as to the statements in said affidavit, and also to those parts of it which are hearsay testimony, particularly to the conversations with Courtland Hempstead, and Charles Smith the fireman, and also as to the part which gives his opinion as to the cause of the destruction of the Lexington.)

I can recollect most of the particulars now as well as when the said affidavit was made. The heat of a coal fire with blowers is a good deal stronger than a wood fire. The power of a wood fire is not to be compared with that of a coal fire. I put the patches on at Stonington because there were leaks in the arches, where they were burnt out by the coal fire. The coal was the cause of it. When I repaired the bridge wall on the passage to Stonington, I was behind the place where the bridge wall had stood, underneath the boiler. The space behind the bridge wall and the space under and beside the boiler were all open and communicated. It was a space from 18 inches to two feet in width—

the boiler being on one side and the ceiling of the boat on the other. The material of the ceiling was of wood, the same as any other boat, and was not covered with any kind of metal. There was wood piled up throughout that space on each side of the boiler, from the front end to the back end, on the trip on which I was in her. There was something like three or three and a half tiers—it was piled up to the deck. This wood was there, and was put in there, when I went aboard; I ordered it out, when it took fire, and helped [to] pass it out. When the bridge*water* was broken down, there was nothing to prevent the blast going to the wood pile on the side of the boat. The danger from fire was greatly increased when the blowers were on. No precaution had been taken, to my knowledge, to prevent fire, when the Lexington was altered from wood to coal. There was a damper in the smoke pipe of the Lexington. The damper was on the second course above the steam chimney—there was a lever attached to that, so that you could shut it or open it as you liked; on the end of that lever—one end—was a ball that weighed about eight pounds, and on the other end there was a small chain, about eight feet long, that led down on the casing of the steam chimney. There was a nail on the casing to which the chain was hooked to keep the damper open—it was where any passenger could come along, or rub against it and unhook it. If the chain were unhooked while the blowers were on, the blaze would come out of the furnace doors, or blow out the chocks of the return flues. There would also be an increased pressure on the bridge wall, and every where below the damper. The damper was necessary when she burnt wood, and when she was changed to coal it was unnecessary, but was never taken out.

Fifth interrogatory—When you went on the trip in the Lexington, of which you have spoken, did you receive any instructions or cautions, and what were they, and from whom?

(Counsel for defendants objects, as tending to elicit hearsay testimony.)

To the fifth interrogatory he saith—When I went aboard the boat, my brother told me to be careful and beware of fire—that on the trip before, the boat had been on fire. He told me to beware of the bridge wall, for that he had no confidence in it, and said that he himself would never go another trip on board the boat, excepting that on the 13th of January. The mortar was there, for the purpose of mending the bridge wall, but it was frozen, and we had to melt it. The boat took fire on the trip on which I was in her—both the boat and wood took fire. I discovered that the boat was burning when we were abreast of Berg's ship yard. I stopt the engine, and Charles Smith, one of the firemen, a boy, and myself put it out with buckets. We were about fifteen or twenty minutes in putting it out. I had no watch. I examined to see what occasioned the fire, and found that it had communicated through the bridge wall, a corner of which on the starboard side was down. I told the second engineer to start the engine, and I went to work to mend the bridge wall. During the time, the belt was thrown off the blowers. The wood alongside the boiler (two tiers) was passed

out by me to one of the deck hands, and by him put aft under the direction of the second mate, Mr. Crawley. There was no other place to put it, because she was full of cotton. There were about two or two and a half tiers left alongside of the boiler—I should judge that was the quantity—it depends on the length of the wood. The boat took fire several other times before we got to Stonington. The kelson of the boat was on fire several other times, and we put it out with water—we kept always a bucket there. We kept the blowers on, the same as before, after the first fire, until we got to Stonington. There she was on fire again, and we threw off the belt to put the fire out, but did not stop the engine. When we came back from Stonington, no part of the bridge *water* gave way. I did not use the blowers coming back.

Sixth interrogatory—Did you consider the bridge wall sufficient for the purposes for which a bridge wall was necessary in that boat?

To the sixth interrogatory he saith—I did not, and I so stated to my brother, who was the engineer of the boat, and to Mr. Secor, who did the repairs on the boat. Mr. Secor was my employer.

Adjourned, by consent of parties, to Thursday, February 24th, 1842, at 3 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

At the time and place of adjournment, personally appeared before me, the above named Frederick W. Hempstead, to testify and the truth to say, on the part of the plaintiff, in the above mentioned matter; and the examination of the said Frederick W. Hempstead was continued as follows, viz:

Cross examination.

The grate bars of the Lexington were made of cast iron—they rested on a cast iron bearer, and the bearer rested on the bridge wall. The front end of the grate bars rested on an iron bearer which was fastened on with tap bolts to the boiler. The blowers of the Lexington were like the ordinary blowers, except, I think, they were rather larger. I never measured them. The Lexington could keep the necessary quantity of steam without the blowers—she would burn less fuel without the blowers, than with them, with care. I raised the bridge wall and sheet iron work for the purpose of increasing the heat and getting more steam—I did it according to Mr. Secor's orders. The joints of the brick on the sheet iron work were filled up with fire sand. The boat made as many revolutions without blowers as she did with—that is, when the engine was to work. I never run the engine to strain the boat, but I run it moderately. Two top courses of the bridge wall were the only ones so exposed to the heat as to melt the bricks. These two top courses would melt, and the bearer, and the ends, the back end of the grate bars. We put the water in the ash pans several times, and as often as I thought necessary. The ash pans were not fed with waste pipes. I made the repairs on the bridge wall the trip but one before I

went in the boat. The iron round the cracks of the arches appeared to be very sound, and there was no scale on the arches. When a boat is altered from wood to coal, sometimes the blowers are added and sometimes not, according to the fancy of the owners. I never was employed on any boat that had blowers excepting the Lexington. The damper was about four feet above the promenade deck, as I think, as near as I can recollect. When the damper was shut it would entirely close the smoke pipe, with room enough for it to turn round. I never went in the Lexington but one trip. I had worked on board the Lexington one or two days about a year before I made the alterations of the bridge wall, as stated in my direct examination, in the employ of Mr. Secor. The troughs or spouts that led the air from the blowers to the furnace was made of sheet iron. They were about 11 inches by 22, as I should judge. There were two of them—one on each side. I should judge they were 18 *from* 20 feet in length— I never measured them. There was wood for the furnaces taken on board at Stonington—I can't say how much; but there was enough to fill up around the boiler, as there usually was, and it was placed alongside the boiler the same as I described in my direct examination. Then there was wood on the guards up to the gangways, where the fire engine was shoved in. At the time I went in the Lexington to Stonington, we left New York at 5 o'clock and arrived at Stonington at 2 o'clock the next morning, as the mate told me. I had no watch. In returning, we left Stonington at half-past nine or ten at night, and arrived at New York at 3 o'clock the next afternoon—so I was told. We were delayed by the ice in the East River. My brother Courtland Hempstead was thirty-three years of age when he was lost. He was a first-rate engineer, and a careful and good man. He was considered to know the use of coal as fuel on board steamboats—he understood the use of coal well. He was in the southern boats with me, where they burnt coal, and on Catharine ferry, where they also used coal. After we put out the fire opposite Berg's yard, we did not put back any of the wood alongside the boiler. The wood and the carlines of the deck were on fire when we were opposite Berg's yard. There was a standing pipe in front of the boiler, and there was a small cock in that through which we drew the water to put out the fire. It took a good deal of water to put out the fire at Berg's yard. The passengers were alarmed at the fire. There were two firemen, a coal breaker, and myself, who put out the fire. The bridge wall did not fall but once during our trip from New York to Stonington; but the bricks were started, so that the fire worked through, and occasioned the subsequent fires on that trip. The men on the watch assisted me in putting out the subsequent fires. When I first discovered the fire opposite Berg's yard, I was standing by the eccentric hook on the main deck. I heard the cry of fire, and saw the smoke. There were three buckets belonging to the engine; one of them had mortar in it. There were buckets all around the boat, but only one that had a rope to it. None of those buckets were used to put out the fire; the buckets we used were what we had below. I think it was I who stopt

the engine opposite Berg's yard, before I went down to the fire room. I am pretty certain it was I. If the fire were thrown over the top of the bridge wall it would come upon the bricks which were laid on the sheet iron work, and if there were a hole through the bricks and sheet iron it would fall through into the ceiling and kelsons. The hole in the bridge wall which I discovered opposite Berg's yard, was a large hole—I should think large enough for a man to crawl through. There were a great many holes through the sheet iron work back of the bridge wall; the sheet iron was covered over with bricks, and the fire sand on top of that.

Direct examination resumed.

There was a fire engine on board the Lexington at the time I went in her. It was placed on the guard on the larboard side, about midships of the boiler, and was so surrounded with cotton that it could not be moved without removing the cotton from one side to the other. It would have taken three men an hour to remove the cotton so as to get the engine out, unless they had taken an axe and cut the hands of the boat out and thrown the cotton overboard. I never saw an axe belonging to the boat—I have seen ship carpenter's axes on board the boat when they were there to work.

F. HEMPSTEAD.

Sworn before me, this twenty-fourth day of February, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Dexter Brigham, junior.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared Dexter Brigham, junior, to testify and the truth to say on the part and behalf of the plaintiff in the above-mentioned matter.

And the said Dexter Brigham, junior, being about the age of twenty-three years, and having been by me first cautioned and sworn to tes-

tify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Dexter Brigham, jun'r, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Did you, on the 13th of January, 1840, ship any specie by the steamer Lexington; if yea, how much, and for whom? And describe the same particularly.

To the first interrogatory he saith—I did ship specie on that day by the steamer Lexington, to the amount of about eighteen thousand dollars, on account of the Merchants' Bank of Boston. I do not recollect the exact amount, but I am pretty confident that it was eighteen thousand dollars—it was the balance of a lot of about forty thousand dollars, which was shipped three days previous, on the previous trip. The way bills, which are at the office of Harnden and Company, in Boston, will shew the exact amount shipped on that day. The total amount of checks sent on at that time, appears by the freight book at our office, in this city, to be forty-six thousand eight hundred and twenty-nine dollars and five cents. I am now of the firm of Harnden and Company—I was at that time one of their agents. Eight thousand dollars of this money were in American quarters, in eight boxes, and the balance was, as is stated in the freight books, in four bags. At that time I attended to the specie department myself. On reference to the freight book, now produced before the commissioner, I find that the amount shipped on the 13th of January, 1840, was just eighteen thousand dollars. The first entry in the freight book on this subject is as follows, viz:

"Damon's trip out, January 10th, 1840.
"29 boxes $28,829 05 Merch's. Bank ex. 15 00.

The second entry on the freight book is as follows:

Harnden's trip out, Jan'y 13th, 1840."
"12 parcels (8 boxes, 4 bags) Merch's B'k $46,829 05 in all 19 50 ex—82 27."

The first entry was made by E. L. Stone, who used often at that time to do writing for me in the office. Stone must have taken the amount from a memorandum made by me, as I am confident, from our mode of doing business, that I drew the specie myself. The memorandum was not kept—(counsel for the defendants objects to the testimony relative to the entry made by Mr. Stone, unless proved by Stone himself.) The second entry was made by myself at the time, and is in my own handwriting, and I know it to be correct. The meaning of it is, that on the 13th of January, 1840, we shipped the balance of forty-six thousand eight hundred and twenty-nine dollars and five cents, remaining over and above the amount shipped by us on the 10th of January. The figures "19 50," and "82 27," in the entry, are the expenses and charges. I am confident that I drew the eight thousand dollars from the American Exchange Bank myself; and it is my impression that I drew the ten thousand dollars in gold from the Merchant's Exchange Bank on the 13th of January, 1840.

Second interrogatory—How do you know that the quantities of gold and silver, which you have stated were shipped by the Lexington, were shipped?

To the second interrogatory he saith—The gold I accompanied on board myself, and the silver I don't recollect seeing on board. William A. Bond was our driver at that time. I went with him to the bank—I saw the boxes rolled out, and told the teller to deliver them to Bond. The gold was put into a valisse, and the valisse was put into the safe in the crate on board the boat.

Third interrogatory—What were your means of knowledge as to the amounts contained in the bags and boxes?

To the third interrogatory he saith—We took the amount from the tags on the bags, and the marks on the boxes. I did not count any of it myself. We never did count specie when it was given to us in bags and boxes from the banks.

Cross examination.

First cross interrogatory—Into what crate on board the Lexington was the specie sent on by Harnden on that day put?

To the first cross interrogatory he saith—It was put into a crate reserved expressly for Harnden. There was a crate on board expressly for Harnden's use. Harnden paid so much per month for the transportation. I don't recollect the amount he paid at that time.

Second cross interrogatory—Who had the charge of that crate on that passage?

To the second cross interrogatory he saith—Adolphus Harnden, a brother of William F. Harnden. He was lost in the Lexington.

Third cross interrogatory—Did Mr. Adolphus Harnden have sole charge of this crate, or did any, and which, of the officers of the boat assist him in the charge of it?

To the third cross interrogatory he saith—He had sole charge of the contents of the crate, which were under lock and key, and the key was in his possession. He went with the crate for the purpose of taking charge of it in case of accident. It was the duty of the officers of the boat to have the crate changed from the boat to the railroad. Mr. Harnden's business was to see it changed, but as he could not do it himself, he was entitled to the assistance of the crew in getting it from the boat to the railroad.

Fourth cross interrogatory—Was there any notice given to the Merchants' Bank that you know of, of the terms on which Harnden's cars were carried on board the defendant's boats?

To the fourth interrogatory he saith—I don't know of any notice having been given to the bank.

Fifth cross interrogatory—Was any notice of that kind published that you know of, previous to the 13th day of January, 1840, and for how long previous?

To the fifth cross interrogatory he saith—I don't recollect distinctly that there was such a notice published previous to that time, but I am very confident that there was.

Sixth cross interrogatory—When the checks on which this specie was obtained was delivered to Mr. Harnden, of Boston, by the Merchants' Bank, were or were not any receipt given to the Merchants' Bank for those checks?

To the sixth cross interrogatory he saith—I don't know.

Seventh cross interrogatory—How often were you in the habit of being on board the defendant's boats between August, 1839, and the 13th of January, 1840?

To the seventh cross interrogatory he saith—I always made it a practice of accompanying the valisse of money on board the boats, which was probably every trip that the boats made.

Eighth cross interrogatory—Do you recollect seeing any notice to shippers or consignees relative to the company's liability for freight, posted up on board the boats?

To the eighth cross interrogatory he saith—I do not.

Ninth cross interrogatory—Did your business lead you to any particular part of the boat, or did it take you through the boat?

To the ninth cross interrogatory he saith—My business was where the crate was, which was usually on the forecastle, but I frequently went the length of the boat between the two decks—a notice of the kind referred to would not be likely to attract my attention.

Direct examination resumed.

(Not waiving the objection relative to the contract of Mr. Harnden with the company, the counsel for the plaintiff cross-examines the witness on the point, de bene esse.)

First direct interrogatory—What was the amount paid by Mr. Harnden to the company for the transportation of his crate?

To the first direct interrogatory he saith—I don't know; but it is my impression that it was the same as it is now, which is $250 per month. If Mr. Harnden carried freight out of the crate, he pays the same as other persons. That is the case now, but I think we had not often extra freight to ship in January, 1840.

Second direct interrogatory—To whom did the crate used by Mr. Harnden on board the Lexington belong?

To the second direct interrogatory he saith—I don't know. We now find our own crates. Mr. Harnden had procured crates previous to January, 1840, but I don't know whether the crate on board the Lexington on her last trip belonged to him or not. The crates in the winter season used to get changed about.

DEXTER BRIGHAM, Jr.

Sworn before me, this twenty-sixth day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of William A. Bond.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that on this thirtieth day of May, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly and legally authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared William A. Bond, to testify and the truth to say, on the part and behalf of the plaintiff in the above-mentioned matter.

And the said William A. Bond being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William A. Bond, and he did thereupon depose, testify, and say, as follows, viz:

First interrogatory—Did you, on the 13th of January, 1840, or did you not, ship any specie on board the Lexington? If yea, from whom did you receive it, what were the particulars and amount of it, and where did you leave it?

To the first interrogatory he saith—I did ship specie on board the Lexington on that day. I received it from the American Exchange Bank of this city. I was in the employ of William F. Harnden. I went to the bank with Mr. Dexter Brigham, Jr., and at his request I took from the bank eight boxes, purporting and appearing to be specie. The boxes were thousand dollar boxes. I am familiar with the size of specie boxes. I loaded them on board Harnden's waggon myself, at the door of the bank, and drove them down to the steamer Lexington. I took them on board, and put them into Harnden's crate which stood on the forecastle. This was, I should think, about half-past two or a quarter of three o'clock, before the bank closed. I locked up the crate, and put the key in my pocket, and returned to Harnden's office for the other packages. I kept the key. Adolphus Harnden, the conductor, on that day, had a key of his own. I saw the specie boxes in the crate when we locked it up, the moment before the boat left the wharf.

Cross examination.

First cross interrogatory—From what do you judge that the boxes taken by you from the bank contained specie?

To the first cross interrogatory he saith—I was given to understand from Mr. Brigham that I was to take from the bank eight boxes of specie. I supposed it was so, because I went to the bank for specie. I judged from the weight that they contained silver; they were about the right weight for thousand dollar boxes of silver.

Second cross interrogatory—What was Adolphus Harnden the conductor of?

To the second cross interrogatory he saith—He was the conductor of Harnden's crate.

Third cross interrogatory—What enables you to speak with certainty as to the number of boxes shipped on board the Lexington on that day?

To the third cross interrogatory he saith—The accident which occurred to the Lexington immediately afterwards, fixed it on my mind.

WILLIAM A. BOND.

Sworn before me, this thirtieth day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Edward L. Stone.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this thirty-first day of May, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared Edward L. Stone, to testify and the truth to say, on the part and behalf of the plaintiff in the above-mentioned matter.

And the said Edward L. Stone being about the age of twenty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward L. Stone, and he did thereupon depose, testify, and say, as follows, viz:

First interrogatory—Where were you, and in what employ, on the 13th of January, 1840?

To the first interrogatory he saith—I was in the city of New York at that time, but was engaged in no particular business. I was in the habit of being at Mr. Harnden's office almost daily.

Second interrogatory—Did you at any time assist Mr. Harnden in his business, and how?

To the second interrogatory he saith—I was frequently there, and in the absence of Mr. Brigham, made entries in the entry books.

Third interrogatory—Did you, on the 10th of January, 1840, make any, and what, entries, in Mr. Harnden's freight book?

To the third interrogatory he saith—I did make entries in the freight book on that day. The book now produced before the commissioner is the freight book, and the following entry was made by me, and is in my handwriting.

"Damon's trip out, Jan'y 10th, 1840.
"29 boxes $28,829 05 Merch's Bank ex. 15 00."

I don't know from recollection where I got the items; but from the custom of doing business at that time, I am confident that I must have taken it from the specie when brought into the office, or if not brought into the office, from the report of the person who took it from the bank. I made the entry on the same day on which it bears date. I don't remember who obtained the specie on that day.

Cross examination.

First cross interrogatory—If the specie were brought into the office, did you count it, or did you rely upon the marks on the boxes in making the entries?

To the first cross interrogatory he saith—We should rely on the account of the person who brought it from the bank.

Second cross interrogatory—Have you any means of determining whether the specie was brought into the office, or whether a mere memorandum was handed you by a person who took it from the bank?

To the second cross interrogatory he saith—I have no means of determining.

EDWARD L. STONE.

Sworn before me, this thirty-first day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of William M. Parks.

UNITED STATES OF AMERICA,
Southern district of New York.
CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this thirty-first of May, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and le-

gally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared William *L.* Parks, to testify, and the truth to say on the part and behalf of the plaintiff in the above-mentioned matter.

And the said William M. Parks, being about the age of twenty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said William M. Parks, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Where were you on the 13th of January, 1840, and in whose employ?

To the first interrogatory he saith—I was the paying teller of the American Exchange Bank, and was in their employ. I was there that day. I had been in their employ nearly a year—ever since the bank went into operation.

Second interrogatory—Who kept account of the specie in the bank?

To the second interrogatory he saith—I kept it. I received it from the receiving teller on the days the specie is deposited, and I pay it out.

Third interrogatory—Was any specie paid to Mr. Harnden or his men on the 13th of January, 1840? If yea, to whom, how much, and what are the particulars?

To the third interrogatory he saith—I paid to Mr. Harnden or his men—I mean either to Mr. Brigham or Mr. Adolphus Harnden, both of whom I knew, eight thousand dollars in silver in thousand dollar boxes. I think both Mr. Brigham and Mr. Adolphus Harnden were present at the time.

Fourth interrogatory—Upon what did they obtain the money, and on whose account?

To the fourth interrogatory he saith—I cannot remember.

Fifth interrogatory—Was it or not your custom, as paying teller, to keep a written memorandum of the specie paid out by you?

To the fifth interrogatory he saith—It was.

Sixth interrogatory—Please to produce the memorandum for the 13th of January, 1840, and annex it to your deposition.

To the sixth interrogatory he saith—I cannot do so—it is lost. It is a kind of memorandum that is not required to be kept.

Seventh interrogatory—What impressed upon your mind the exact amount of money paid to Mr. Harnden's men on that day, and the fact that it was paid?

To the seventh interrogatory he saith—When the Lexington was lost, we referred to the books, and found out what amount of specie was sent on that day, and what amount was paid to Mr. Harnden's men. The reference to the books was made while the matter was fresh in my mind, a day or two after the loss of the Lexington.

Eighth interrogatory—How do you know that there were eight thousand dollars in the boxes?

To the eighth interrogatory he saith—I received them as such, and they were, I presume, counted by our porter. It was his duty to do so. The porter at that time was Mr. Haskell.

W. M. PARKS.

Sworn before me, this thirty-first day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

And at the same time and place, before me, Joseph Bridgham, commissioner as aforesaid, personally appeared David L. Haskell to testify and the truth to say, on the part and behalf of the plaintiff in the above-mentioned matter, and the said David L. Haskell, being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said David L. Haskell, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Where were you on the 13th of January, 1840, and in whose employ?

To the first interrogatory he saith—I was at the American Exchange Bank, and in the employ of the bank.

Second interrogatory—Had you any care of the specie in the bank, and what was your duty respecting it?

To the second interrogatory he saith—I had the whole charge of the specie at that time, and my duty was to receive and count it. I had been in the bank from the first of January, 1840.

Third interrogatory—Was any specie paid to Mr. Harnden, or his men, on the 13th of January, 1840? If yea, to whom, and how much, and give the particulars.

To the third interrogatory he saith—There was specie paid to Mr. Harnden's men. There were two or three, I think, who came to take it away. The amount paid out to them was eight thousand dollars in thousand dollars boxes. It was in Spanish quarters.

Fourth interrogatory—How did you know the amount contained in the boxes?

To the fourth interrogatory he saith—They were thousand dollar boxes, and there were eight of them. I am familiar with the size of a box fit to contain a thousand dollars in silver coin. I don't know whether or not I counted the specie. My impression is, that the boxes were received from some country bank—if so, it was our usual mode of business to have it counted, and that it would have been my duty to do.

Fifth interrogatory—Did you deliver it personally to Mr. Harnden's men?

To the fifth interrogatory he saith—I did. I knew the men, though I did not know their names.

Cross examination.

First cross interrogatory—Were you in any other bank before you went into the employ of the American Exchange Bank?

To the first cross interrogatory he saith—No.

Second cross interrogatory—What opportunity did you have, before going into the American Exchange Bank, of becoming familiar with the size of specie boxes?

To the second cross interrogatory he saith—I had none before then; but between the first and 13th of January, 1840, I had counted a great deal of specie, and was as familiar then as I am now with the size of specie boxes.

Third cross interrogatory—What are the grounds of your impression that the specie came from a country bank?

To the third cross interrogatory he saith—We received about that time from Albany, I think, a number of thousand dollar boxes of specie in quarters, and my impression is, that those were some of them.

D. L. HASKEL.

Sworn before me, this thirty-first day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of James Donaldson.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting [business] at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared James Donaldson, to testify and the truth to say, on the part and behalf of the plaintiff in the above mentioned matter.

And the said James Donaldson, being about the age of fifty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James Donaldson, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—What is your employment, and in what employment were you in January, 1840?

To the first interrogatory he saith—I am bank porter. I was in the same employment in January, 1840, in the Merchants' Exchange Bank. I have been there for nearly six years, and am now in their employment.

Second interrogatory—Had you, in January, 1840, any care of the specie in the bank, and what was your duty respecting it?

To the second interrogatory he saith—I had charge of the specie at that time. It was my duty to count it, and if required, to pay it out to the teller. In case of my absence, the teller paid out the money to any person who called for it.

Third interrogatory—Who was the paying teller of the bank on the 13th of January, 1840, and is he now living?

To the third interrogatory he saith—Gilbert Sherwood was the teller. He is now dead.

Fourth interrogatory—Was any account kept of the specie paid in and paid out, at the Merchants' Exchange Bank—and if so, who kept it?

To the fourth interrogatory he saith—There was an account kept by Gilbert Sherwood. The book now produced before the commissioner is the account book kept by Sherwood.

The entries are as follows, for the 13th of January, 1840:

	139,854
" Jan. 13—draft Bank Geneva	10,000
	129,854
" cents	26
	129,880"

The entry 139,854, is a balance of the account previous to the 13th of January, 1840. The next entry means that $10,000 was paid out on a draft from Geneva on that day. I have no knowledge whether it was paid out in gold, but I think it was, because the bank was at that time holding on to its silver and generally paying out gold.

(Counsel for defendants objects to the introduction of the book, it not being in the handwriting of the witness, and he having no knowledge of the correctness of the entries.)

Fifth interrogatory—Do you believe the entries in that book to be correct, and what reason have you for believing as you do?

To the fifth interrogatory he saith—I believe the entries to be correct. We had always, every three months, to see that the specie in the vault was correct, and we depended on the book for that purpose. I also know, from the general correctness of Mr. Sherwood, whom I know to be very accurate.

Sixth interrogatory—If specie was paid out at your bank in packages marked as containing certain amounts, since you have been there as porter, would or would not those packages actually contain such amounts, when so paid out?

To the sixth interrogatory he saith—The packages would contain the exact amount marked upon them.

Seventh interrogatory—What were the customary packages of gold?

To the seventh interrogatory he saith—Five thousand, four thousand, three thousand, and two thousand.

Cross examination.

First cross interrogatory—Are the bags of gold always counted immediately previous to their being paid out?

To the first cross interrogatory he saith—No, sir; they are counted as they come in, and are paid out according to the marks upon them.

Second cross interrogatory—If the paying teller, on the 13th of January, 1840, paid out gold on that day, what means had he of knowing the amount paid out?

To the second cross interrogatory he saith—No other means than by the marks on the bags.

JAMES DONALDSON.

Sworn before me, this fifteenth day of June, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Peleg Hall.

UNITED STATES OF AMERICA,
Southern district of New York.
CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that on this fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the deposition of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against "the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared Peleg Hall, to testify and the truth to say, on the part and behalf of the plaintiff in the above-mentioned matter.

And the said Peleg Hall being about the age of twenty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Peleg Hall, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—What is your name, residence, and occupation?

To the first interrogatory he saith—Peleg Hall, of the city of New

York, merchant, one of the firm of Fearings & Hall, Exchange Place.

Second interrogatory—Did you ship cotton to John H. Clarke, on or about the 13th of January, 1840? If yea, state fully and particularly all you know relative to the same.

To the second interrogatory he saith—We received a bill of lading for thirty bales of cotton, arrived from Mobile, by ship Rienzi, for John H. Clarke. Ten bales were shipped to John H. Clarke, at Providence, in the boat which sailed previous to the sailing of the Lexington, and the balance of the lot was shipped on the Monday subsequent, in the Lexington. When John H. Clarke sent us the bill of lading, he requested us to send the cotton to him by the steamboat. The bill of lading is hereunto annexed, marked "*schedule A.*" The cotton was received from the ship Rienzi, according to the bill of lading. I did not, myself, see the cotton. I directed our carman, Dennis Tracy, to go [to] the wharf and take the cotton and carry it to the steamboat Lexington. Our carman is a careful man—a man who is daily in the habit of receiving and shipping a large quantity of goods, and understands his business thoroughly. The value of the cotton I do not know.

Cross examination.

First cross interrogatory—Did you receive any bill of lading from the defendants for the ten bales of cotton, shipped to the plaintiff, in the boat which sailed previous to the sailing of the Lexington?

(Counsel for the plaintiff objects to any question relative to any shipments excepting on the 13th day of January, 1840.)

To the first cross interrogatory he saith—I don't know whether we did or not. We did not always take bills of lading for goods shipped by that line of steamboats.

Second cross interrogatory—If you did receive a bill of lading for those ten bales of cotton, what did you do with it?

To the second cross interrogatory he saith—I don't know—I may have sent it to Mr. Clarke, and I may have kept it in the store.

Third cross interrogatory—Had you, between the 1st of August, 1839, and the first of January, 1840, shipped goods for yourself, or for any one else, in the defendants' boats, and did you take bills of lading for the same?

To the third cross interrogatory he saith—We shipped goods, but I don't know that we took bills of lading. We frequently did not take bills of lading.

Fourth cross interrogatory—Look at schedule "G," hereunto annexed and testified to by Caleb A. Townsend, and say whether you ever saw a notice similar to it on board the defendants' boats previous to the 13th of January, 1840?

To the fourth cross interrogatory he saith—No; I never saw such a notice there, or any where else.

Adjourned by consent of parties to June 17th, 1842.

JOSEPH BRIDGHAM,
Commissioner.

At the time and place of adjournment, personally appeared the above named Peleg Hall; and the examination of the said Hall was continued as follows, viz:

Fifth cross interrogatory—Have you, since your last examination, examined your letter book, and have you ascertained whether you received any bill of lading for the ten bales of cotton, shipped to the plaintiff in the boat which sailed previous to the sailing of the Lexington?

To the fifth cross interrogatory he saith—I have examined the letter book, and find that we did receive a bill of lading for the cotton, and I sent it to John H. Clarke, at Providence.

Sixth cross interrogatory—Can you state whether or not you took or received a bill of lading of the cotton shipped on board the Lexington, on January 13th, 1840?

To the sixth cross interrogatory he saith—I do not recollect.

PELEG HALL.

Sworn to, this 17th day of June, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of John H. Smith.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this twelfth day of December, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared John H. Smith, to testify and the truth to say, on the part and behalf of the plaintiff in the above-mentioned matter.

And the said John H. Smith being about the age of forty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John H. Smith, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Did you make a trip in the Lexington about January, 1840, and at what time in particular?

To the first interrogatory he saith—I made a trip in the Lexington from Stonington to New York—the trip previous to her loss.

Second interrogatory—Was the Lexington at that time in good order and condition, as to her machinery and boilers on her said trip, or how otherwise?

To the second interrogatory he saith—I should think she was not in good order; after having gone five or six miles from Stonington, the boat would stop. I went on deck to see if the ice stopt us, but saw none, only an occasional piece of ice floating about the boat; I then went to where the Captain and two other persons, whom I thought to be the engineer and assistant engineer, were at work on the machinery, and I asked the Captain what was the matter. He said he thought not much but what could be cured in a short time. (Objected to by counsel for defendants as hearsay.) Then one of the men, who was with him, threw down a cold chisel, and said it was no use to try any more. The Captain and the two other persons then held a conversation, which I could not hear. I went up about three times afterwards, and was told that the trouble was with the blowers. There was a continuous rumbling noise when the boat did go; she went very slowly. I presume the noise was made by the pistern—(objected to by defendants' counsel.) I went on deck the last time between 12 and 1 o'clock, when she was going at about half the ordinary speed of steamboats on that route. (Defendants' counsel objects in time to hearsay.)

Third interrogatory—Did you, in the course of that evening or night, look into the fire room, and what did you notice?

To the third interrogatory he saith—I did look into the fire room once or twice, and saw the fire flying about pretty profusely—much more than I had been accustomed to seeing it in any other boat. I presumed that this was the effect of the blower. I considered that there was some trouble, and so stated to several gentlemen about the stove, in the cabin, among whom the only person I knew was Judge Story. I told them that I was somewhat acquainted with machinery, and thought all was not right, which, I presume, prevented them from retiring. I left them all up when I went to bed at 1 o'clock.

Fourth interrogatory—Previous to the loss of the Lexington, were there reports or statements that she had been on fire?

(Objected to by counsel for the defendants.)

To the fourth interrogatory he saith—I do not recollect—I cannot tell. This much I can say, that if I had known that the Lexington was to have sailed on that day, I should not have left Boston. I expected to have come on in the Providence. My knowledge of the boat was such, that I did not consider her as safe as other boats, and so stated to Mr. S. F. Lathrop when we were on board of her some weeks before. Mr. Lathrop said that he thought her a pretty good boat.

Cross examination.

First cross interrogatory—Where is your residence, and what is your occupation?

To the first cross interrogatory he saith—I reside at Brooklyn, and am an oil manufacturer.

Second cross interrogatory—What opportunity have you had of *been* acquainted with steamboat machinery?

To the second cross interrogatory he saith—We have two boilers and an engine in our factory.

Third cross interrogatory—When you went on board the Lexington, were you not fearful that there would be some trouble, and were you not for that reason much more attentive to what was going on, than is your usual custom on board of other boats?

To the third cross interrogatory he saith—I think I was more suspicious of her, which made me look around attentively.

Fourth cross interrogatory—Did you not watch the operations in the fire room on that trip much more than you ever did in the fire room of other boats?

To the fourth cross interrogatory he saith—I think I did rather more.

Fifth cross interrogatory—What induced you to think that the pistern was out of order?

To the fifth cross interrogatory he saith—Because the boat did not go ahead more than one half the time.

Sixth cross interrogatory—Did you see them remove the top of the cylinder, or did you know of its having been removed?

To the sixth cross interrogatory he saith—I did not.

Seventh cross interrogatory—How could any thing be done to the pistern without removing the top of the cylinder?

To the seventh cross interrogatory he saith—Some do not have any tops to the cylinder.

Eighth cross interrogatory—What sort of engines are those which do not have tops to the cylinder?

To the eighth cross interrogatory he saith—A great many in common use. I don't know much about steamboat machinery.

Ninth cross interrogatory—Are you certain that the rumbling noise, which you have referred to, was produced by the pistern?

To the ninth cross interrogatory he saith—I think it was.

Tenth cross interrogatory—Might not the slow motion of the boat be owing to a want of steam, occasioned by the blowers being stopt?

To the tenth cross interrogatory he saith—I rather presume, from some difficulty with the machinery, the steam was reduced.

JOHN H. SMITH.

Sworn to, this twelfth day of December, A. D. 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Joseph Bridgham, a commissioner duly authorized by the circuit court of the United States for the district of Rhode Island, in the first circuit, under and by virtue of the annexed commission, do hereby certify, that the reason for taking the foregoing depositions is, and the fact

is, that the witnesses reside at the distance of more than one hundred miles from the place of trial of this cause. I further certify, that a notification of the time and place of taking the said depositions, signed by me, was made out and served on Emerson & Pritchard, esquires, the counsel for the plaintiff, and George R. J. Bowdoin, esquire, the counsel for the defendants in the within named cause, to be present at the taking of the depositions, and to put the interrogatories, if he or they might think fit.

I further certify, that on the 26th day of October, 1841, and on the 21st, 23d, and 24th days of February, and the 26th, 30th and 31st days of May, and the 15th and 17th days of June, and the 12th day of December, 1842, I was attended by the counsel for the respective parties, and by Dennis Tracy, Frederick W. Hempstead, Dexter Brigham, William A. Bond, Edward L. Stone, William M. Parks, David L. Haskel, James Donaldson, Peleg Hall, and John H. Smith, who were of sound mind and lawful age, and the witnesses were by me first carefully examined, and cautioned, and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up and forwarding the same, with my own hand, to the court for which the same were taken.

And I do further certify, that I am not of counsel, nor attorney, for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this sixteenth day of December, A. D. one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

JOSEPH BRIDGHAM,
Commissioner.

Depositions of Joseph Bishop, Elihu S. Bunker, James Murphy, Theodosius F. Secor, Charles B. Smith, Jacob H. Vanderbilt, David Crowley, Roswell E. Lockwood, Caleb A. Townsend, Thomas C. Gladding, Stephen Manchester, and William F. Harnden, witnesses for the defendants.

Circuit Court of the United States for the district of Rhode Island, in the first circuit.

JOHN H. CLARKE
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY.

Gents: You will please to take notice, that I shall proceed to take the depositions of such witnesses as either party may request, to be used in the above entitled suit, by virtue of a commission issued out of the circuit court of the United States for the district of Rhode Island, and to me directed, at my office, number 25, Nassau street, on Thursday the 10th

day of March instant, at 4 o'clock, P. M., at which time and place you are hereby notified to attend.

Yours, &c.,
JOSEPH BRIDGHAM.

New York, March 7th, 1842.

To EMERSON & PRITCHARD, esq'rs, of counsel for pl'ff.
GEO. R. J. BOWDOIN, esq., of counsel for def'ts.

We hereby admit due service of the above notice.
G. R. J. BOWDOIN,
EMERSON & PRITCHARD.

Thursday, March 10th, 1842.—At the time and place within noticed, the counsel for the respective parties appeared, and no witnesses being in attendance, the examination was, by consent of parties, adjourned to Friday, the eleventh day of March instant, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Joseph Bishop.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this eleventh day of March, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared Joseph Bishop, to testify and the truth to say, on the part and behalf of the defendants, in the above-mentioned matter.

And the said Joseph Bishop being about the age of thirty-seven years, and having been by me first cautioned and affirmed to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Joseph Bishop, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Did you build the steamboat Lexington?

To the first interrogatory he saith—Yes; I was of the firm of Bishop and Simonson, who built the Lexington. I believe it was in the year 1835, but I am not positive—she began to run soon afterwards.

Second interrogatory—Give a general description of the manner in which she was built, the materials which were used, and her dimensions?

To the second interrogatory he saith—She was 205 feet long, 22 feet beam, and ten feet depth of hold. Her floors were sixteen inches deep and six inches thick. They were partly of oak and partly of chesnut. The futtocks were chesnut principally; her top timbers were cedar; she was cross-braced, something in the manner of a bridge on the sides for support; and she had, also, a bearing frame above the deck. She had heavy bilge kelsons, fastened with screw bolts, planked on the sides with three-inch oak plank on the bottom, with two and a half inch oak plank. The engine kelsons, which were heavy, were fastened with screw bolts, and extended nearly to both ends of the boat. The clamps and strings were fastened with screw bolts; and the braces crossing each other, described above, were fastened with screw bolts at the intersections. The planks were fastened on with composition spikes and locust tree nails. The butts were bolted with copper bolts and rivetted.

Third interrogatory—What was her relative strength of construction as compared with other boats, navigating the Sound at the time the Lexington navigated it?

To the third interrogatory he saith—She was quite equal in point of strength to any boat navigating the Sound?

Fourth interrogatory—Did you make any repairs upon her after she commenced running; and if so, when was the last time you made such repairs, and what was her condition after you completed them?

To the fourth interrogatory he saith—We made all the repairs she ever had. The last repairs were, I should think, in December, previous to the time she was burnt; it was late in the season, and we fitted her for a winter boat; she was put in first-rate order in every respect, as far as the hull was concerned.

Fifth interrogatory—Have you, as one of the firm of Bishop & Simonson, or by yourself, been concerned in building steamboats and other vessels, and how many steamboats have you built?

To the fifth interrogatory he saith—I have been concerned principally in building steamboats since 1832. I have built, I suppose, about twenty-five—something like that.

Sixth interrogatory—When you made the last repairs on the Lexington, was it left to your discretion to make the repairs, or were certain specific repairs orders?

To the sixth interrogatory he saith—It was left to our discretion. The orders were to do all that was necessary to put her in complete order.

Seventh interrogatory—Was she or not taken out of the water and examined and overhauled, and what was the expense of making those repairs by you or your firm?

To the seventh interrogatory he saith—She was taken on the railways of the dry dock company, and overhauled and coppered. I do not recollect the expense.

Eighth interrogatory—What was the space around her boiler compared with that of other boats you know of? (Objected to by counsel for plaintiff.)

To the eighth interrogatory he saith—It was about the usual space; not so wide as some, for the boat was not as wide.

Ninth interrogatory—Whether or not were the precautions against fire, from the smoke chimney of the boiler, such as were usual in other steamboats, and what is your opinion as to the efficiency of those precautions? (Objected to by counsel for plaintiff. Counsel objects to *all* questions involving a comparison of the Lexington with other boats, and to the mere opinions of the witness.)

To the ninth interrogatory he saith—I believe she had all the precautions that are usual and customary—such precautions generally prove sufficient.

Tenth interrogatory—Whether or not did the steam chimney of the boiler extend above the promenade deck—if so, how far, and how near did the promenade deck come to the steam chimney?

To the tenth interrogatory he saith—The steam chimney extended about two feet above the promenade deck, as near as I can recollect; and there was from four to six inches between the promenade deck and the steam chimney.

Eleventh interrogatory—Who was the Lexington built for?

To the eleventh interrogatory he saith—Cornelius Vanderbilt.

Twelfth interrogatory—What was the cost of the hull and joiner's work?

To the twelfth interrogatory he saith—She was not built upon contract. I should think the hull of such a boat worth about twenty thousand dollars at the time she was built, and the joinder's work about eight thousand dollars.

Cross examination.

First cross interrogatory—What was the material of the deck?

To the first cross interrogatory he saith—White pine.

Second cross interrogatory—What was the material of the clamps?

To the second cross interrogatory he saith—I believe they were of yellow pine. The ceilings were of yellow pine.

Third cross interrogatory—What was the condition of the Lexington the last time she was brought to you for repairs?

To the third cross interrogatory he saith—She was in the ordinary condition of a boat after a season's work; she wanted new coppering; she did not appear to be racked or strained that I ever discovered.

Fourth cross interrogatory—Did you have charge of the repairs personally?

To the fourth cross interrogatory he saith—Partly so. I was on board frequently while she was undergoing repairs. Mr. Simonson was there more than I was; Mr. Simonson directed the repairs more than myself; I attended more to the coppering. Mr. Simonson is since dead.

Fifth cross interrogatory—What was the space between the boiler and ceiling, around the boiler?

To the fifth cross interrogatory he saith—About four feet, I suppose, on the sides of the boiler, and a bulk head of about one foot forward of the boiler.

Sixth cross interrogatory—What was there over the boiler?

To the sixth cross interrogatory he saith—A deck. The boiler deck was raised about a foot above the main deck, and about 7 inches above the boiler itself; it was supported by carlines of oak; they rested at each end on a fore and aft piece of timber. The carlines were about three inches above the boilers. They were so when she was built, but I do not recollect whether or not they rested on the boiler when she was up for repairs. I do not know of any alterations made in her.

Seventh cross interrogatory—What was the width of the boiler room?

To the seventh cross interrogatory he saith—It was from [one] side to the other of the boat; I should think, deducting the width of the beams, it was twenty feet and six inches.

JOSEPH BISHOP.

Sworn before me, this eleventh day of March, 1842, having been first read and subscribed by the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Elihu S. Bunker.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this eleventh day of March, in the year one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared Elihu S. Bunker, to testify and the truth to say, on the part and behalf of the defendants in the above mentioned matter.

And the said Elihu S. Bunker, being about the age of sixty-nine years, and having been by me first cautioned and affirmed to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Elihu S. Bunker, and he did thereupon depose and say, as follows, viz:

First interrogatory—What is your occupation now, and what has it been for the last thirty years?

To the first interrogatory he saith—I am now an inspector of steamboats, under the law of Congress, 1838. I have had no other business but steamboats since the first day of January, 1811. During that time I have built six steamboats, and commanded them and others too. I

ran first on the North River, and afterwards on the Sound from New York to New Haven, New London, Norwich, Stonington and Providence.

Second interrogatory—Were you acquainted with the steamboat Lexington, and when did you last examine her?

To the second interrogatory he saith—I was acquainted with her, and examined her the October previous to her being lost, and after the repairs made on her by Bishop and Simonson, when she was hauled on the railways.

Third interrogatory—What was the condition of her hull, boiler and engine, and what was the state of her general equipment at the time you so examined her?

To the third interrogatory he saith—She was in good order, and was fitted for a winter boat—she was fitted to run during the winter. The whole was in fair, good order. She was as well equipt as any boat I ever run—that is, she was well found in chains, anchors and fire buckets. I should think she could not have had less than three dozen fire buckets.

Fourth interrogatory—At the time you last examined her, how did the strength of her hull compare with that of other boats on the Sound?

(Counsel for the plaintiff objects to all questions involving a comparison of the Lexington with other boats.)

To the fourth interrogatory he saith—I think she was full as strong as any on the Sound at the time she was lost; she was as strong as any boat of her size on the Sound.

Fifth interrogatory—Which do you consider the least dangerous fuel that is *is* used on board steamboats?

To the fifth interrogatory he saith—Coal of any description excepting charcoal—either anthracite or bituminous. There are no sparks from sea coal or anthracite coal; and there is no danger of coal taking fire in the bins.

Sixth interrogatory—What are the changes that are material to be made in the boiler, and furnaces, and parts connected therewith, when the fuel is changed from wood to coal?

To the sixth interrogatory he saith—It requires a little different form of grate, and the grate to be raised up; nothing else material. The wood requires more space than coal. In burning wood in this boat, as the draft was good, the grate bars were necessary to be farther apart than in burning coal. It varies in different boats.

Adjourned, by consent of parties, to Monday, March 14th, 1842, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Monday, March 14th, 1842.—At the time and place of adjournment above noticed, the counsel for the respective parties appeared, and no witnesses being in attendance, the examination was, by consent of par-

ties, adjourned to Tuesday, the 22d day of March instant, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Tuesday, March 22d, 1842.—At the time and place of adjournment, personally appeared before me, the aforesaid Elihu S. Bunker, to testify and the truth to say, on the part and behalf of the defendants in the above matter; and the examination of the said Elihu S. Bunker was continued as follows, viz:

Seventh interrogatory—Please describe the mode in which the Lexington was steered, and state whether or not she had any extra steering apparatus; and if yea, what it was, and in what order it was all in?

To the seventh interrogatory he saith—She had iron rods running fore and aft, as far as they could extend, and on each side ropes leading from the after end of the rods to the rudder; she had an extra wheel aft, with chains, all apparently in first-rate order while running.

Eighth interrogatory—Do you recollect whether or not the steam chimney extended above the promenade deck; and if yea, how much above?

To the eighth interrogatory he saith—It did extend above the promenade deck. I have no doubt it was two feet, and my impression is, it was higher.

Ninth interrogatory—Do you know what was the space in the steam chimney which was filled with steam, and what would that space be filled with when there was any steam in the boiler?

To the ninth interrogatory he saith—I should think the space was eight inches, and it would always be filled with steam when there was any steam in the boiler.

Tenth interrogatory—Do you know for whom the Lexington was built; if yea, who was it, and about when did she become the property of the defendants?

To the tenth interrogatory he saith—She was built for Cornelius Vanderbilt, who owned her entire. She had been, I should think, the property of the defendants about one year before she was lost.

Eleventh interrogatory—Do you know whether or not the defendants made any repairs upon the Lexington shortly after they purchased her? If yea, state generally what those repairs were, and also as to their extent?

To the eleventh interrogatory he saith—I think they purchased her in the fall, and in the winter made the ordinary repairs for wear and tear on her hull. The boiler was at that time taken pretty much to pieces and repaired, and new work put in where it was required. I was particularly present myself, together with my associate, Mr. Clarke, and saw the work done.

Twelfth interrogatory—Do you know whether or not the Lexington had any fire engine or hose on board, and in what order were they?

To the twelfth interrogatory he saith—She had a small fire engine,

what we call a hand engine, with hose. I believed it to be in good order, but I did not know any thing about it.

Thirteenth interrogatory—In your opinion would or would not the blowers, as used on board the Lexington, increase the danger from fire?

(Objected to by counsel for plaintiff, as tending to elicit the opinion of the witness.)

To the thirteenth interrogatory he saith—They would not if they were properly constructed.

Cross examination.

First cross interrogatory—What opportunities had you of learning those particulars respecting the Lexington, which you have stated?

To the first cross interrogatory he saith—From examining her in the course of my duty twice a year legally, and I was often on board of her.

Second cross interrogatory—Did you exercise any superintendence of the repairs which you have described?

To the second cross interrogatory he saith—No farther than as regards the boilers, so that I might certify that it was done properly after it was done.

Third cross interrogatory—Is that your custom with every steamboat boiler that is repaired?

To the third cross interrogatory he saith—Yes, sir, invariably; not by request of the owners, but for our own satisfaction; as to the boiler of the Lexington, I recollect it perfectly well.

Fourth cross interrogatory—What kind of an engine had the Lexington?

To the fourth cross interrogatory he saith—She had a powerful beam engine, of excellent works; I think as fine an engine as ever went out the port.

Fifth cross interrogatory—How large was the boiler of the Lexington?

To the fifth cross interrogatory he saith—I do not recollect exactly the dimensions, but so far as I do recollect, it was not less than thirteen feet in width, and about eighteen to twenty feet in length.

Sixth cross interrogatory—What was there around the boiler?

To the sixth cross interrogatory he saith—Nothing, until you come to the sides of the boat. There was a bulk head at a distance of three or four inches at the back end of the boiler, of pine wood. The space between the sides of the boiler and the sides of the boat was about three feet. It was probably filled with wood or coal, which ever was used; not the whole length of the space, but the greater part of it. It would be the proper place for the fuel.

Seventh cross interrogatory—How far were the grate bars raised, and what did they rest upon after they were raised?

To the seventh cross interrogatory he saith—There is no rule as to the height they are raised. I should think the grate bars of the Lexington were raised a foot, but they might have been raised twenty inches. There are pieces of iron rivetted on the sides of the boiler, and bearers across on which the grate bars rest. The iron bearer on which the grate

bars rested in the Lexington, rested on the bridge wall and on braces at the sides of the boiler; it probably rested on the braces, and the bridge *water* was built up under it.

Eighth cross interrogatory—How high was this bridge wall after the grate bars had been raised for burning coal?

To the eighth cross interrogatory he saith—I cannot tell; they raise the bridge wall to raise the draft. I never saw the boiler of the Lexington after she was altered to burn coal.

Ninth cross interrogatory—Had the Lexington any water bridge wall?

To the ninth cross interrogatory he saith—I don't remember whether she had or not.

The further examination of Elihu S. Bunker was then adjourned, by consent of parties, to Thursday, the 24th day of March instant, at 5 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

At the time and place of adjournment, personally appeared before me, the aforesaid Elihu S. Bunker, to testify and the truth to say, on the part and behalf of the defendants, in the above matter; and the examination of the said Elihu S. Bunker was continued as follows, viz:

Coss examination resumed.

Tenth cross interrogatory—How do you estimate the height of the brick bridge wall? [State] as nearly as you can.

To the tenth cross interrogatory he saith—About three feet from the water pan.

Eleventh cross interrogatory—Of what materials was it built?

To the eleventh cross interrogatory he saith—I should think of brick; I don't know of what kind of brick.

Twelfth cross interrogatory—Do you remember the thickness of the bridge wall of the Lexington?

To the twelfth cross interrogatory he saith—I do not.

Thirteenth cross interrogatory—What was the object of raising the grate bars and the bottom of the main flue?

To the thirteenth cross interrogatory he saith—Because the coal requires less space than wood.

Fourteenth cross interrogatory—Is the heat from coal, driven by blowers in a steamboat boiler, greater or less than the heat from wood?

To the fourteenth cross interrogatory he saith—It must be greater—that is, more steam is produced by blowers. The heat is greater, I have no hesitation in saying.

Fifteenth cross interrogatory—Have you ever looked into the furnace of the Lexington when she was burning coal with the blowers on?

To the fifteenth cross interrogatory he saith—I have not.

Sixteenth cross interrogatory—Did you ever inspect the Lexington after she was altered to burn coal?

To the sixteenth cross interrogatory he saith—No, sir.

Seventeenth cross interrogatory—Does a coal fire in a steamboat boiler, driven by blowers, create a particularly intense heat?

To the seventeenth cross interrogatory he saith—Yes, I should think it did; I should think it would create a great heat; a man can safely look into the furnace doors when the blowers are on; I have done it a hundred times; I have done it ten times since I first came here to be examined; it is the best way to inspect the inside of the boiler when the steam is on.

Eighteenth cross interrogatory—Was there a damper in the smoke pipe of the Lexington?

To the eighteenth cross interrogatory he saith—Yes, sir.

Eighteenth cross interrogatory—If that damper should be suddenly closed when the blast was on, what would be the effect?

(Counsel for defendants objects, as tending to elicit the opinion of the witness.)

To the eighteenth cross interrogatory he saith—The draft would cease, and if the furnace doors were open, it would blow the fire out.

Nineteenth cross interrogatory—What did the blast first strike against on coming into the boiler?

To the nineteenth cross interrogatory he saith—The bridge wall.

Twentieth cross interrogatory—If the bridge wall should be broken down, would the blast drive out the cinders through the aperture, and where would they go to?

To the twentieth cross interrogatory he saith—It might not drive them out. If the cinders were not put out by the ash pan, they would be driven through the aperture of the bridge wall.

Twenty-first cross interrogatory—What did the foundation of the bridge wall rest in?

To the twenty-first cross interrogatory he saith—The water pan. There was sheet iron on board the Lexington, the whole length of the boiler, laid on the floor. The water pan extended as far as the bridge wall; I don't know that it did any farther.

Twenty-second cross interrogatory—Did you, the last time you inspected the Lexington, see that the whole floor behind the bridge wall, under the boiler, was covered with sheet iron?

To the twenty-second cross interrogatory he saith—I do not remember of having looked the last time I inspected her.

Twenty-third cross interrogatory—When did you last see it?

To the twenty-third cross interrogatory he saith—The first time that I inspected her, which was the last of September or first of October, 1838. It is the only time that I remember of looking under the boiler.

Twenty-fourth cross interrogatory—When were you last in the fire room of the Lexington?

To the twenty-fourth cross interrogatory he saith—The last time I inspected her, which was before she was altered for coal. This was in September, 1839.

Twenty-fifth cross interrogatory—Did the bridge wall in the Lexington stand by its own strength, or what support had it?

To the twenty-fifth cross interrogatory he saith—It must have stood by its own strength.

Twenty-sixth cross interrogatory—What was there behind it?

To the twenty-sixth cross interrogatory he saith—The space under the boiler.

Twenty-seventh cross interrogatory—Did that space communicate with the passages at the sides of the boiler?

To the twenty-seventh cross interrogatory he saith—Yes, sir.

Twenty-eighth cross interrogatory—How many of the Lexington's fire buckets had ropes rigged to them?

To the twenty-eighth cross interrogatory he saith—I don't know that one.

Twenty-ninth cross interrogatory—Do you mean to say that the Lexington had two sets of steering apparatus completely rigged?

To the twenty-ninth cross interrogatory he saith—They could not have two apparatus completely rigged. Besides the one commonly used at the wheel house, there was one quite at the stern, on the promenade deck. The latter consisted of a tiller which fitted into a hole in the rudder post. The tiller had an eye on each side of it, to which chains could be attached, running to a wheel, by which it was worked. This was not in absolute working order, but could have been put in order in two minutes.

Thirtieth cross interrogatory—When did you last examine this tiller apparatus, so as to know what order it was in?

To the thirtieth cross interrogatory he saith—I don't remember; but I think I only saw it when I inspected the boat in September, 1839.

Thirty-first cross interrogatory—How long were the ropes which ran to the wheel commonly used, before connecting with the iron rods?

To the thirty-first cross interrogatory he saith—The whole rope for one side would be about five fathoms, fifteen feet of which would be upon a straight line under the promenade deck, where the iron rod runs; the rest running to the wheel and around it.

Thirty-second cross interrogatory—What was there next over the boiler in the Lexington?

To the thirty-second cross interrogatory he saith—The boiler cover; the combings ran fore and aft, and also athwart ships. The hatch, the boiler hatch was an inch and a half pine plank, and rested on the end of the carlines let into the combings.

Thirty-third cross interrogatory—Did not the carlines, which supported the boiler hatch, rest themselves on the top of the boiler.

To the thirty-third cross interrogatory he saith—No, they did not; I should think there was a space of six inches between the carlines and the boiler. There might have been something on the boiler to support them in the middle.

Thirty-fourth cross interrogatory—Would it have been safe to have had pine carlines resting immediately on the boiler?

To the thirty-fourth cross interrogatory he saith—I should think it would; I know no reason why it would not; no fire can come near them outside the boiler.

Thirty-fifth cross interrogatory—Did the steam chimney come up through the boiler hatch?

To the thirty-fifth cross interrogatory he saith—No; it came up forward of it. The boiler hatch proper came up to the steam chimney, and there was a pine covering all over it. The flue from the fire passes up inside of the steam chimney, to the smoke pipe, which steps on to the top of the steam chimney.

Thirty-sixth cross interrogatory—Did the promenade deck come close up to the steam chimney; and if not, how much space was there around it?

To the thirty-sixth cross interrogatory he saith—There was, I should think, about two inches; I don't know. This is what I should think ought to be; I don't recollect about the Lexington.

Direct examination resumed.

First direct interrogatory—Do you recollect how high the wooden casing around the steam chimney extended?

To the first direct interrogatory he saith—I do not know how high it was from particular examination.

Second direct interrogatory—If the blowers made nine hundred revolutions to seventeen strokes of the engine, would or would not the blast be sufficient to throw down the bridge wall?

(Objected to by counsel for plaintiff, as tending to elicit the mere opinion of the witness.)

To the second direct interrogatory he saith—No blast could be put under it that would blow it down, if it was properly put up. If there was no place for the blast to escape, excepting against the bridge wall, it might effect it.

Third direct interrogatory—Do you know about how much the defendants expended in repairs upon the Lexington after they purchased her?

(Counsel for plaintiff objects to the question as irrelevant.)

To the third direct interrogatory he saith—I do not.

Fourth direct interrogatory—In what order have the defendants kept their boats, in comparison with other steamboats?

(Counsel for plaintiff objects to the above.)

To the fourth direct interrogatory he saith—They have kept their boats in the best order for safe running. I consider that the Lexington, at the time she was running last, was well fitted up for a winter boat.

Fifth direct interrogatory—Have the defendants been liberal, or otherwise, in their expenditures upon their boats?

(Counsel for plaintiff objects.)

To the fifth direct interrogatory he saith—I think they have spared no pains or expense in rendering their boats safe.

Sixth direct interrogatory—Did or did not the defendants materially improve the Lexington after they purchased her?

(Objected to by counsel for plaintiff, and waved.)

Sixth direct interrogatory—Did you or not see the Lexington on the stocks when she was built?

To the sixth direct interrogatory he saith—Yes, sir.

Seventh direct interrogatory—After the Lexington was built, was there any thing done to her hull to render her more safe; and if so, what was it?

To the seventh direct interrogatory he saith—Floating logs were put under her as bearings, and they afterwards put hips on to her.

Eighth direct interrogatory—State what you mean by hips?

To the eighth direct interrogatory he saith—I mean pieces of timber bolted to the sides, and running down to a point under water, about twenty inches wide at the water line. They extended about two-thirds the length of the boat, in the middle of her.

Cross examination resumed.

First cross interrogatory—Did the Lexington run against the John W. Richmond during the summer and fall of 1839?

To the first cross interrogatory he saith—I do not remember that she did; if she did I have forgotten it.

Second cross interrogatory—Did you know of her being racked and strained by racing during that period, or did you not?

To the second cross interrogatory he saith—I did not.

Third cross interrogatory—Did you, or did you not, hear of the Lexington's taking fire several times, and how many times, in December, 1839, and January, 1840?

(Objected to by counsel for defendants as hearsay.)

To the third cross interrogatory he saith—I never heard of her ever taking fire excepting at the time of her loss; I have heard since her loss that she took fire once previous to her being burnt.

Fourth cross interrogatory—In giving your answers under this commission, have you not depended very much upon what you know to be usual, or proper, or necessary in a steamboat like the Lexington, or upon what you think must have existed, rather than what you actually remember of the steamboat Lexington, of your own knowledge?

To the fourth cross interrogatory he saith—I don't know of a question that I have answered, that I have not answered from my own knowledge of the Lexington.

The further examination of Elihu S. Bunker was, by consent of parties, adjourned to Thursday, April 7th, 1842, at 5 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Thursday, April 7th, 1842.—At the time and place of adjournment personally appeared before me, the aforesaid Elihu S. Bunker, to testify, and the truth to say, on the part and behalf of the defendants, in the above matter; and the examination of the said Elihu S. Bunker was continued as follows, viz:

Direct examination resumed.

First direct interrogatory—Did you ever examine the blowers of the Lexington, so as to be able to say whether or not they were properly constructed?

To the first direct interrogatory he saith—I did not.

Second direct interrogatory—Look at the drawing marked schedule "D," and hereunto annexed, and say whether or not it is a faithful representation of the Lexington's boiler and furnace, as far as you can recollect; and state particularly what parts you do so recollect?

(Objected to by counsel for plaintiffs.)

To the second direct interrogatory he saith—I should think it was a faithful representation of the boiler and furnaces. The furnaces I particularly recollect. I recollect, too, the steam chimney and the shape of the bottom of the boiler particularly. I recollect particularly that there were certainly three furnaces, but do not recollect as to the number of the return flues. The general shape of the boiler is as near right as it can be.

Third direct interrogatory—Are you certain whether or not the Lexington had water bridge walls?

To the third interrogatory he saith—I have forgotten.

Cross examination resumed.

First cross interrogatory—Have you commanded any, and what steamboats, in the line to which the Lexington belonged; and when, and for how long a time?

To the first cross interrogatory he saith—I commanded the Benjamin Franklin when she and the President were sold to the Boston and New York Transportation Company, which company afterwards became the New Jersey Steam Navigation Company, the defendants in this suit. I continued in their employ from that time, which was June, 1836, until the following March, as commander of one or the other of their boats. I have not been in their employ, or received any salary from them, since that time. I commanded on the Providence line from June, 1822, till March, 1837.

Second cross interrogatory—Did you ever see or assist in drawing the plan marked schedule "D?"

To the second interrogatory he saith—I never saw any drawing of the Lexington's boiler until on this examination.

On reading over my examination I wish to make the following corrections: In the answer to the second cross interrogatory I stated that I invariably examined the repairs made on steamboat boilers; I mean to say, we examined all that were repaired here—all those which come under our supervision. In answer to the thirty-first cross interrogatory, I mean to say, that as regards the length of the ropes in the Lexington I do not know, but I should think they were of the length described in my answer to that interrogatory. I wish to state, too, that I do not recollect whether there *were* was any iron under the boiler, on the floor of the boat from the bridge wall to the after end of it. In answer to the nineteenth cross interrogatory, I would state, that the blast, when it enters under the grate, turns up into the grate and through the fire; this is caused by the bridge wall, otherwise it would go under the boiler, wherever there was a space.

ELIHU S. BUNKER.

Sworn before me, this 7th day of April, in the year 1842, having been first read and subscribed by the witness. Before me,

JOSEPH BRIDGHAM,
Commissioner.

Deposition of James Murphy.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this fifteenth day of March, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared James Murphy, to testify and the truth to say, on the part and behalf of the defendants, in the above-mentioned matter.

And the said James Murphy being about the age of twenty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James Murphy, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—What is your employment, and what has it been for the last ten years, and in whose employ have you been, and in whose employment are you now?

To the first interrogatory he saith—I am boiler-maker and blacksmith, and I have been engaged in that business for the last ten years. I have been in Sheeden, Dutcher and Company's employ in Canada, and with James Cunningham, Phœnix Foundry, in this city. I have been in the West Point Foundry, and with T. F. Secor and Company. I am now in the employ of T. F. Secor & Co., and have been with them about four years; and over three years as foreman of the boiler-makers.

Second interrogatory—Were you acquainted with the steamboat Lexington? Did you do, or superintend, any work upon her engine or boiler, and what did you do within six months before her loss?

To the second interrogatory he saith—I was acquainted with the steamboat Lexington. I laid the work out on board the boat, with Courtland Hempstead, engineer of the boat. I made the conductors from the blowers, and superintended putting them in their place, and made the alterations in the sheet iron work. The alterations were put-

ting another course of sheet iron work above the old, and I made a new side pipe for the engine; I superintended putting the sheet iron work around the bridge wall. This I did three or four trips—it might be half a dozen before her loss.

Third interrogatory—Was there any space left, and how much was it, between the upper course of sheet iron work, which you have said you put in, and the course of sheet iron work which you said was there before?

To the third interrogatory he saith—There was a space between the upper course of sheet iron work, and the old work, about from twelve to fifteen inches.

Fourth interrogatory—What do you mean by the conductors to the blowers?

To the fourth interrogatory he saith—It leads the air from the blowers directly under the furnaces. It is a sheet iron box, about eight inches high, and about twenty-eight inches wide. It is laid on the floor of the vessel. There was one under each furnace.

Fifth interrogatory—What other alterations or repairs were made on the boiler or furnaces of the Lexington, at the time you refer to, that you know of?

To the fifth interrogatory he saith—There was what is called a jacket on the steam chimney and the brick work, and built from the bottom of the ash pans up to the top of the bridge wall.

Sixth interrogatory—Was the old bridge wall torn down?

To the sixth interrogatory he saith—No, sir.

Seventh interrogatory—Where was the brick work built, that you have spoken of above, and how thick was it?

To the seventh interrogatory he saith—It was built up against the bridge wall on the forward end of the bridge wall, on the back end of the furnace; I don't know which way the boiler faced. The back end of the furnace is farthest away from the furnace doors. The brick work was one course of brick laid flatways; the brick work was, I think, about four inches thick. In order to build up this, we carried the foundation out from the bottom of the water bridge wall, and carried the course of brick right up in front of it.

Eighth interrogatory—What do you mean by the water bridge wall?

To the eighth interrogatory he saith—I mean the pipe that runs from the centre leg to the outside one.

Ninth interrogatory—What was its shape?

To the ninth interrogatory he saith—It was a cylinder, and was riveted to the legs.

Tenth interrogatory—Why is it called the water bridge wall?

To the tenth interrogatory he saith—Because it contains water.

Eleventh interrogatory—Is it stopt up at both ends, or does it communicate with the legs?

To the eleventh interrogatory he saith—It communicates with the legs.

Twelfth interrogatory—What was the diameter of this bridge wall?

To the twelfth interrogatory he saith—I am not certain about the di-

ameter—it was from twelve to fourteen inches, or fifteen inches, the size we generally put them in.

Thirteenth interrogatory—What sort of bridge wall or bridge walls were there in the Lexington's boilers before you built up the brick work?

To the thirteenth interrogatory he saith—There was brick work built from the ash pans, up to the level of the water bridge wall, plumb with the front of the bridge wall.

Fourteenth interrogatory—How thick was this bridge wall of which you have spoken?

To the fourteenth interrogatory he saith—I don't know the exact thickness.

Fifteenth interrogatory—What was the object of building up the brick work of which you have spoken, in front of the old bridge walls, and how high did you raise it above the top of the water bridge wall, and how high was the top of it above the ash pans?

To the fifteenth interrogatory he saith—The object of building up the brick work was to contract the arches. I don't know how high it was raised above the bridge wall on the ash pans.

Sixteenth interrogatory—What was the object of contracting the arches?

To the sixteenth interrogatory he saith—It was thought the arches were too deep for burning coal. It was merely to throw the heat of the fire to the top of the furnace quicker.

Seventeenth interrogatory—How were the cinders and fire from the furnace, carried over the bridge wall, prevented from falling on the floor of the boat?

To the seventeenth interrogatory he saith—By the sheet iron and brick work.

Eighteenth interrogatory—How was the sheet iron and brick work put up?

To the eighteen interrogatory he saith—There were bars bolted on to the legs, and sheet iron work laid in them, and brick work laid on them?

Nineteenth interrogatory—Was that brick work laid in mortar, or were the bricks laid in loosely?

To the nineteenth interrogatory he saith—The bricks were laid in mortar—packed in tight.

Twentieth interrogatory—How many tiers or courses were there of this sheet iron and brick work?

To the twentieth interrogatory he saith—There were two courses of sheet iron work, and one course of brick work on each.

Twenty-first interrogatory—Was there any, and what repairs and alterations made in the lower course of sheet iron and brick work at the time you refer to?

To the twenty-first interrogatory he saith—I don't know that there were.

Twenty-second interrogatory—Was the sheet iron work of which the upper work was made, old or new, or what was it?

To the twenty-second interrogatory he saith—I don't know; sometimes we put in old, and sometimes new; I can't tell which. Sometimes we put in both.

Twenty-third interrogatory—What was the condition of the Lexington's boiler, furnaces, bridge walls, sheet iron and brick work, at the time these repairs or alterations were finished?

To the twenty-third interrogatory he saith—They were all in a good condition.

Twenty-fourth interrogatory—Were these repairs or alterations you have spoken of, made at the time the Lexington was laid up for repairs, or when were they made?

To the twenty-fourth interrogatory he saith—The last time she was laid up for repairs at our (Secor's shop;) we afterwards sent up four or five boiler-makers to put repairs on the arches which had been blistered by the coal.

Twenty-fifth interrogatory—Was the boat's boiler or engine thoroughly overhauled at this time?

To the twenty-fifth interrogatory he saith—No, sir; we did every thing that was considered requisite. What I consider by a thorough overhauling, is to take down every thing and examine it; but I did not do it.

Cross examination.

First cross interrogatory—How many times did you repair the Lexington?

To the first cross interrogatory he saith—I don't know; I repaired her before I worked for Secor.

Second cross interrogatory—Did you repair her twenty times?

To the second cross interrogatory he saith—No, I guess not; I don't know how many.

Third cross interrogatory—Do you recollect the last time before the repairs you have described, and when was it?

To the third cross interrogatory he saith—I don't know; it was before the company bought her, who owned her when she was lost.

Fourth cross interrogatory—Was she repaired at Secor's between that time and the repairs you have mentioned?

To the fourth cross interrogatory he saith—Not that I know of.

Fifth cross interrogatory—How long was this sheet iron and brick work?

To the fifth cross interrogatory he saith—The boiler, I think, was about sixteen feet, and the sheet iron work about ten feet. The sheet iron work reached from the back of the bridge wall to the back end of the boiler. It was covered with brick the whole distance.

Sixth cross interrogatory—Did you use any part of the old sheet iron and brick work about the new?

To the sixth cross interrogatory he saith—I don't know.

Seventh cross interrogatory—Do you recollect that any new brick was brought on board for that use?

To the seventh cross interrogatory he saith—No, sir.

Eighth cross interrogatory—Do you recollect that any new sheet iron was used for that purpose?

To the eighth cross interrogatory he saith—No, I do not.

Ninth cross interrogatory—How near was the new brick work to the top of the arches?

To the ninth cross interrogatory he saith—I don't know.

Tenth cross interrogatory—Was it more than a foot?

To the tenth cross interrogatory he saith—It might be, and it might be less.

Eleventh cross interrogatory—How far were the grate bars from the top of the arches?

To the eleventh cross interrogatory he saith—I don't know.

Twelfth cross interrogatory—How far were the grate bars raised from their former position?

To the twelfth cross interrogatory he saith—I don't know.

Thirteenth cross interrogatory—Where did the blast of the blowers come in?

To the thirteenth cross interrogatory he saith—From the front leg of the boiler; it blew up through the grate bars.

Fourteenth cross interrogatory—What would the blast strike against first, after coming into the boiler?

To the fourteenth cross interrogatory he saith—The bridge wall is the most likely place; that was right opposite, at a distance of six feet. The conductor is wider on the end than the other part of the pipe that leads from the blower.

Fifteenth cross interrogatory—Of what kind of brick was the bridge wall built?

To the fifteenth cross interrogatory he saith—The front course of brick was fire brick; the other part was common hard brick. I am certain that fire brick was used.

Sixteenth cross interrogatory—What was the bridge wall built of at the previous time you repaired it?

To the sixteenth cross interrogatory he saith—It was built of brick; I don't know of what kind.

Seventeenth cross interrogatory—How wide was the boiler?

To the seventeenth cross interrogatory he saith—I don't know.

Eighteenth cross interrogatory—What was there on top of the boiler?

To the eighteenth cross interrogatory he saith—A wooden boiler-house. I don't know whether it rested on the boiler or not; I never examined it.

Nineteenth cross interrogatory—What was the floor behind the bridge wall?

To the nineteenth cross interrogatory he saith—It was a wooden floor—the floor of the boat.

Twentieth cross interrogatory—If the bridgewall were thrown down, was there any thing to prevent the cinders being blown through on to the floor of the boat?

To the twentieth cross interrogatory he saith—Yes, sir; there was

boiler iron bolted on to the flange of the ash pan, and carried up and bolted on to the backside of the water bridge wall.

Twenty-first cross interrogatory—How high did this iron come up above the flange of the ash pan?

To the twenty-first cross interrogatory he saith—About the centre of the water bridge wall.

Twenty-second cross interrogatory—When the Lexington was changed from burning wood to coal, were any greater precautions than before taken against fire?

To the twenty-second cross interrogatory he saith—I don't know that there were.

Twenty-third cross interrogatory—Does coal, in a steamboat engine furnace, create a more intense heat than wood?

To the twenty-third cross interrogatory he saith—Yes, sir.

Twenty-fourth cross interrogatory—Do blowers, like those on the Lexington, create a blast as great as those in cupola furnaces?

To the twenty-fourth cross interrogatory he saith—Yes, sir, I believe they do.

Twenty-fifth cross interrogatory—Was there a damper in the smoke pipe of the Lexington?

To the twenty-fifth cross interrogatory he saith—I forget whether there was or not.

Twenty-sixth cross interrogatory If there were a damper, and the blast was on, and it were closed, what would be the effect?

(Counsel for the defendants objects to the question as tending to elicit the mere opinion of the witness.)

To the twenty-sixth cross interrogatory he saith—My opinion is, that the blast would come to the furnace doors, and try to get out there.

Twenty-seventh cross interrogatory—What was the space between the sides of the boiler and the sides of the boat?

To the twenty-seventh cross interrogatory he saith—Two men could work abreast on each side. The conductors of the blowers were laid on each side of the boiler on the floor of the boat. There was room enough to walk around them.

Twenty-eighth cross interrogatory—How many arches were there to the boiler?

To the twenty-eighth cross interrogatory he saith—Three or four to each furnace, I think. There were two furnaces. I think it was three arches to each furnace.

Twenty-ninth cross interrogatory—Who were the men who went to Stonington to repair the boiler?

To the twenty-ninth cross interrogatory he saith—I don't know but one, and that was Cassady.

Direct examination resumed.

First direct interrogatory—How tight are the dampers in smoke pipes usually made to fit?

(Counsel for the plaintiff objects to the question as far as relates to any boat excepting the Lexington.)

To the first direct interrogatory he saith—There are some pipes which have an inch clearance all around, and some have two and three, and I have known some to have four. One inch is as tight as are usually made.

Second direct interrogatory—What precautions against fire are usually taken in changing the fuel of boats from wood to coal, on such boilers as the Lexington?

(Objected to by counsel for plaintiff, as above.)

To the second direct interrogatory he saith—On such boilers as the Lexington, I know of no precautions being taken.

Third direct interrogatory—What was the width of the iron work behind the brick bridge wall, and of what kind of iron was it?

To the third direct interrogatory he saith—The width I don't know. It was boiler iron.

Fourth direct interrogatory—How wide was it in comparison with the brick bridge wall?

To the fourth direct interrogatory he saith—It was wider.

Fifth direct interrogatory—How much of the space between the legs of the boiler did it fill up?

To the fifth direct interrogatory he saith—It stretched from one leg to the other.

Sixth direct interrogatory—Where did the sheet iron and brick come from, that was used to make the course or tier that you put in?

To the sixth direct interrogatory he saith—I don't know. The sheet iron must have come from the shop. Where the brick came from I don't know.

Seventh direct interrogatory—Do you know whether or not there was any brick work on board the Lexington torn down, at the time of making these alterations, or immediately previous?

To the seventh direct interrogatory he saith—I do not.

Eighth direct interrogatory—How many setts or courses of sheet iron and brick work were there in the Lexington boiler, back of the bridge wall, and how did they compare in number with the arches or main flue.

To the eighth direct interrogatory he saith—There were two courses of sheet iron work in each of the arches, and there was one course of brick work on each course of sheet iron.

Ninth direct interrogatory—How were the ash pans filled with water?

To the ninth direct interrogatory he saith—I don't know.

Tenth direct interrogatory—Was there any, and what space, between the top of the conductor of the blower and the front of the boiler, or did the front of the boiler fit down close to the top of the conductor?

To the tenth direct interrogatory he saith—I don't know.

Eleventh direct interrogatory—Do you know whether or not you could throw water into the ash pan, when standing in front of the boiler?

To the eleventh direct interrogatory he saith—We could, by raising a damper in front, which had handles to it. It was made of sheet iron.

Cross examination resumed.

First cross interrogatory—Was the boiler of the Lexington such as to require greater or less precaution than other boilers would require, on being changed from wood to coal?

To the first cross interrogatory he saith—That is the kind that would require as great precaution as any; greater than water bottom boilers.

JAMES MURPHY.

Sworn before me, this 15th day of March, 1842, having been first read and subscribed by the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Theodosius F. Secor.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared Theodosius F. Secor, to testify and the truth to say, on the part and behalf of the defendants, in the above-mentioned matter.

And the said Theodosius F. Secor being about the age of thirty-one years and upwards, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Theodosius F. Secor, and he did thereupon depose and say, as follows, viz:

First interrogatory—Where is your residence, and what is your occupation, and how long have you been engaged in it?

To the first interrogatory he saith—I reside at number 99, avenue D. I am a steam engine builder, and have been engaged in that sort of business for sixteen years. I have a steam engine factory in Ninth street, near the East River.

Second interrogatory—Were you acquainted with the steamboat Lexington? Have you done any work on her, and when, and what was it?

To the second interrogatory he saith—I was acquainted with the steamboat Lexington. About two years last December I repaired her boiler; I also repaired the engine; it was repaired at our works.

Third interrogatory—Were the alterations made to enable the Lexington to burn coal made at your factory, and what were those alterations, and when were they made?

To the third interrogatory he saith—Yes, sir. She was altered at our factory. We put in a pair of blowers, and raised the fire bars, and put a farther security of brick work about her furnaces—the furnaces of the boiler. We also raised the bridge wall. These alterations, I think, were made about two years ago, last December.

Fourth interrogatory—Did you make any alterations in the Lexington's boiler or furnaces, subsequent to those you have mentioned? If so, what were they, and when?

To the fourth interrogatory he saith—We made subsequent alterations after she had made two or three trips after the previous alterations. We raised the fire bars near the arches, and raised the brick bridge wall a little higher; we also put in a new set of fire work, above the old iron work, independent of the old, which was left there, consisting of sheet iron work and masonry; that is, brick work. This we did by direction of the head engineer for the purpose of increasing the steam.

Fifth interrogatory—What was the size of the blowers you put in, and how many revolutions were they calculated to make?

To the fifth interrogatory he saith—The blowers were about three feet in diameter, and about twenty-six inches wide; they would make about nine hundred turns to seventeen revolutions of the engine.

Sixth interrogatory—Did you, or not, at the time of making the first alterations you have spoken of, make any repairs upon the sheet iron and brick work under the main flues, and what order was this sheet iron in when the boat left your shop?

To the sixth interrogatory he saith—As regards the old brick work back of the bridge wall, I do not know; my attention was more particularly directed to arranging the blowers and furnaces of the boiler. The engineer had charge of the other part of the work.

Seventh interrogatory—What has been your experience in fitting and arranging steamboats for burning coal, and what boats were they, and on what routes did they run?

To the seventh interrogatory he saith—I have had considerable experience in arranging boilers for coal on board steamboats. The first boat I ever rigged for burning coal, was the steam packet New York, running from New York to Charleston. The next, I think, was the Lexington; the next was the Troy, running to Albany; the next, the Rochester, running to Albany; the next, the Bunker Hill, running between New York and Hartford; the next boat, called the Charter Oak, running between New York and Norwich; the next, the steamboat Oseola, running between New York and Poughkeepsie; the next was the steamboat Columbia, running to Hudson; the next, the steamboat New Haven; and several others, I don't know how many.

Eighth interrogatory—In your opinion, and from your experience, is the danger from fire increased or lessened by changing the fuel from wood to coal?

(Objected to by counsel for plaintiff, as matter of opinion.)

To the eighth interrogatory he saith—There is no material difference.

Ninth interrogatory—Will you state in what condition the engine, boiler and furnaces, of the Lexington were, at the time she left your shop the last time?

To the ninth interrogatory he saith—I do not know how she was the last time she left the shop, but on the time previous she was in good order when she left.

Tenth interrogatory—In your opinion, was the Lexington well or ill protected from fire?

(Objected to by counsel for the plaintiff, as mere matter of opinion.)

To the tenth interrogatory he saith—She was as well protected as any boats I have ever had any thing to do with, or have ever seen.

Eleventh interrogatory—Did you ever cause to be made a drawing of the Lexington's boiler; and if yea, is schedule "D," hereunto annexed, that drawing?

To the eleventh interrogatory he saith—I caused a drawing to be made, and the one now exhibited and hereunto annexed is that drawing.

Twelfth interrogatory—Is the schedule a correct representation, or not, of that boiler, and are the written references correct?

To the twelfth interrogatory he saith—Yes, sir.

Thirteenth interrogatory—What was the thickness of the brick bridge wall at its lowest part?

To the thirteenth interrogatory he saith—The bridge wall was about twelve inches.

Fourteenth interrogatory—Who made the drawing marked schedule "D," above referred to, and from what did he make it?

To the fourteenth interrogatory he saith—It was made by Alfred Sablason; he made it from a rough sketch I gave him in pencil; it was made under my special supervision in every particular.

Fifteenth interrogatory—Are the written references, on the drawing annexed, marked schedule "D," correct, and do they state correctly the different parts of the drawing?

To the fifteenth interrogatory he saith—Yes, sir.

Sixteenth interrogatory—How far did the lower course of sheet iron work extend in length and breadth?

To the sixteenth interrogatory he saith—It extended the whole width, except the thickness of the water legs of the boiler, and about twelve feet in length.

Seventeenth interrogatory—What did the sheet iron work connect with at the furnace end of it?

To the seventeenth interrogatory he saith—It connected with the ash pan.

Eighteenth interrogatory—How much of this sheet iron work was covered with brick work?

To the eighteenth interrogatory he saith—It was covered from the brick bridge wall to the end, the aft end of the boiler. I mean by the aft end of the boiler, the end farthest from that where you fire up.

Nineteenth interrogatory—How far did the upper course of sheet iron work extend in reference to the main flue?

To the nineteenth interrogatory he saith—It extended from the bridge wall to the after end of the boiler, the same as below. The main flue also extended to the back end of the boiler.

Twentieth interrogatory—How wide was this upper course of sheet iron work, compared with the main flue?

To the twentieth interrogatory he saith—It was fitted in tight to the main flue as to width.

Twenty-first interrogatory—Was the upper course covered with brick work?

To the twenty-first interrogatory he saith—It was.

Twenty-second interrogatory—How many main flues were there?

To the twenty-second interrogatory he saith—I think there were nine.

Twenty-third interrogatory—Were all these flues fitted with two courses of sheet iron and brick work?

To the twenty-third interrogatory he saith—They were.

Twenty-fourth interrogatory—How were these courses supported?

To the twenty-fourth interrogatory he saith—By bars of iron bolted to the sides of the main flues.

Twenty-fifth interrogatory—What was the object of these courses of sheet iron and brick work?

To the twenty-fifth interrogatory he saith—To get more steam; that was the object in contracting the flues.

Twenty-sixth interrogatory—What was the object in putting in the lower course of sheet iron and brick work?

To the twenty-sixth interrogatory he saith—To confine the heat to the boiler, and to keep the flame from setting fire to the boat.

Twenty-seventh interrogatory—Do you recollect how high the casing to the steam chimney extended?

To the twenty-seventh interrogatory he saith—I don't recollect.

Twenty-eighth interrogatory—What was the casing of the steam chimney on board the Lexington made of, and what is it usually made of?

(Objected to by counsel for the plaintiff.)

To the twenty-eighth interrogatory he saith—I don't recollect whether she had any at all, or whether it was wood or iron. They are now generally made of sheet iron; they were formerly made of wood; I have seen them both ways.

Twenty-ninth interrogatory—Were you ever in the fire room of the Lexington when the blowers were at work?

To the twenty-ninth interrogatory he saith—Yes, sir.

Thirtieth interrogatory—State whether there were any, and what experiments made with coal, and when were they made?

To the thirtieth interrogatory he saith—I never was out with her but once, and that was the last time she went from the shop; we went for the purpose of seeing if she made steam better than before she burnt coal.

Thirty-first interrogatory—When the furnace doors were open, what was the effect, with the blowers on?

To the thirty-first interrogatory he saith—A few sparks only would come out. I was able to look in the furnace doors without difficulty.

Thirty-second interrogatory—Was, or was not, the blast from the blowers sufficient to throw down the brick bridge wall, if the damper and furnace doors had been closed.

To the thirty-second interrogatory he saith—I don't think it was sufficient.

Thirty-third interrogatory—What opening was there in the lower part of the face of the boiler, and how was it situated with regard to the blower, conductors, or spouts, and about what size was it?

To the thirty-third interrogatory he saith—There was an opening between the face of the boiler and the ash pan, on a line with and between the blower spouts. It was about eight feet long, as near as I can recollect, and about ten inches wide.

The examination of Theodosius F. Secor was adjourned, by consent of parties, to Friday, the 8th day of April, 1842, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

At the time and place of adjournment, personally appeared the above named Theodosius F. Secor, to testify, and the truth to say, on the part and behalf of the defendants, in the above mentioned matter; and the examination of the said Theodosius F. Secor was continued as follows, viz:

Thirty-fourth interrogatory—What was the amount paid by the defendants to your firm for the repairs you made on the engine and boiler of the Lexington, and about what time were those repairs made?

(Objected to by counsel for plaintiff.)

To the thirty-fourth interrogatory he saith—The first repairs made after the defendants bought her, we received $5,470 and some cents for. For the second repairs, about two thousand dollars or upwards. This was at the time the blowers were put in. This last amount includes all the alterations made for the purpose of burning coal, together with the blowers.

Thirty-fifth interrogatory—Do you recollect whether or not the hips were put on to the Lexington after she was purchased by the defendants?

To the thirty-fifth interrogatory he saith—I think they were put on at the time of the heavy repair in the spring of 1839, which was the time that work was finished.

Thirty-sixth interrogatory—Did these sums you have spoken of pay for any thing excepting the repairs on the engine, boiler, and alterations to burn coal; and if so, what else did they cover?

To the thirty-sixth interrogatory he saith—They covered nothing else.

Thirty-seventh interrogatory—State whether or not the blowers were made and put up in a faithful and workmanlike manner?

To the thirty-seventh interrogatory he saith—They were made and put up as well as any we have ever done.

Thirty-eighth interrogatory—In what condition were the boiler and engine after the repairs were made?

To the thirty-eighth interrogatory he saith—Previous to her coming to our shop the last time, her engine and boiler were in good order.

Thirty-ninth interrogatory—Is the plan or schedule marked "D," a correct representation or not of the Lexington's boiler and furnaces?

(Objected to by counsel for plaintiff.)

To the thirty-ninth interrogatory he saith—It is a correct representation.

Cross examination.

First cross interrogatory—Do you recollect of your own knowledge the facts you have stated about the boiler of the Lexington, the appearance of it, &c.?

To the first cross interrogatory he saith—I do; the plan of it was made from recollection.

Second cross interrogatory—What led you to have that plan made?

To the second cross interrogatory he saith—It was made at the solicitation of Captain William Comstock.

Third cross interrogatory—When did Captain Comstock request you to have it made? And state the particulars of his request.

(Objected to by counsel for the defendants as hearsay testimony.)

To the third cross interrogatory he saith—I don't recollect the exact time after the Lexington was lost; it could not have been over seven or eight months, Captain Comstock said to me, "Do you recollect about the Lexington's boiler? I should like to have you make me a plan of it," or words to that effect. I don't recollect that he said what use he wanted to make of it. I don't recollect whether or not he called my attention to particular parts of it. We had about a minute's conversation about it. There were not more than a half a dozen words passed.

Fourth cross interrogatory—When did you have the drawing made?

To the fourth cross interrogatory he saith—Within a week after the conversation, or thereabouts.

Fifth cross interrogatory—Who paid the expense of making it?

To the fifth cross interrogatory he saith—T. F. Secor & Co.

Sixth cross interrogatory—Whose possession has it been in since that time?

To the sixth cross interrogatory he saith—I handed the drawing to Captain Comstock. I have seen it once since in Mr. Bowdoin's office, in New street.

Seventh cross interrogatory—Was there any, and what space, between the sides of the boiler and the sides of the boat, in the Lexington?

To the seventh cross interrogatory he saith—About two feet and six inches on each side.

Eighth cross interrogatory—What was there behind the boiler?

To the eighth cross interrogatory he saith—There was a bulk-head lined with zinc.

Ninth cross interrogatory—How near the boiler was that?

To the ninth cross interrogatory he saith—I don't remember; I know that the boiler was covered with zinc attached to the wood work, and the back end.

Tenth cross interrogatory—How near was the wood work over the boiler to the boiler?

To the tenth cross interrogatory he saith—I don't recollect.

Eleventh cross interrogatory—Were the sides lined with any metal?

To the eleventh cross interrogatory he saith—I don't recollect.

Twelfth cross interrogatory—Was there any thing on the floor of the boat behind the bridge wall?

To the twelfth cross interrogatory he saith—Not to my recollection.

Thirteenth cross interrogatory—When was the last time that you took notice of the bridge wall enough to know its thickness; and how thick was it?

To the thirteenth cross interrogatory he saith—At the time the blowers were put in, it was about twelve inches thick; I don't recollect its exact height after it was raised. From the ash pan to the top of the brick bridge wall it was about three feet and a half; I can't say positively. The top of it was about eight inches thick, and about twelve inches thick below the water bridge wall.

Fourteenth cross interrogatory—How much were the grate bars raised in changing her from wood to coal?

To the fourteenth cross interrogatory he saith—About two feet and a half.

Fifteenth cross interrogatory—How much was the bottom of the main flues raised?

To the fifteenth interrogatory he saith—The bottom was not raised at all, but a new sett of sheet iron work was put in, and the old left in. It was raised about sixteen inches above the old.

Sixteenth cross interrogatory—What was the object of raising it?

To the sixteenth cross interrogatory he saith—To get the fire to act more directly on the arches.

Seventeenth cross interrogatory—What is the heat of a coal fire as compared with a wood fire in the furnace of a boiler?

To the seventeenth cross interrogatory he saith—I don't know whether one would be any hotter than the other.

Eighteenth cross interrogatory—Is the heat from a coal fire in such a furnace driven by blowers, such as you have described in the Lexington, greatly hotter than a wood fire?

To the eighteenth cross interrogatory—It is hotter, but how much I could not say; it would be hotter just in the vicinity of the fire bars.

Nineteenth cross interrogatory—In the Lexington, where did the blast from the blowers come into the furnace, and what did it first strike against?

To the nineteenth cross interrogatory he saith—It came in at the forward end of the furnace. I consider the power just equalized after it gets into the furnace, and it would strike all round alike. Directly in front of it would be the brick bridge wall.

Twentieth cross interrogatory—When the Lexington was changed from burning wood to coal, were any additional precautions taken against fire?

To the twentieth cross interrogatory he saith—The sides of the furnace, between the legs of the boiler and the ash pan, were lined with brick work, whereas before they were lined with iron only. This was done to prevent the air from escaping, and to prevent the fire from igniting the wood work outside. It was expected there would be greater heat above the grate bars, from burning coal.

Twenty-first cross interrogatory—Of what kind of brick was the bridge wall built?

To the twenty-first cross interrogatory he saith—It was built of common hard brick, excepting the side exposed to the fire, which was of fire brick.

Twenty-second cross interrogatory—Was there a damper in the smoke pipe of the Lexington?

To the twenty-second cross interrogatory he saith—I don't recollect.

Twenty-third cross interrogatory—If there were a damper, and it had been closed when the blast was on, what would have been the effect?

(Counsel for defendants objects as matter of opinion.)

To the twenty-fourth cross interrogatory he saith—If the furnace door were open the fire would come out.

Twenty-fifth cross interrogatory—Did you have any work done on the Lexington after she left your shop the last time, and if so, what was it?

To the twenty-fifth cross interrogatory he saith—We had men there to work, but what they did I don't know. They made one or two trips in her, but what they went for I don't know. I presume they were called upon to go by the engineer, but I don't know any thing about it.

Twenty-sixth cross interrogatory—When the Lexington was repaired by you the last time, did you examine the joint where the smoke pipe joins the steam chimney?

To the twenty-sixth cross interrogatory he saith—I don't know that I did.

Direct examination resumed.

First direct interrogatory—What was the thickness of the sheet iron work in the flues?

To the first direct interrogatory he saith—I don't exactly recollect.

Second direct interrogatory—Who built the Lexington's engine and boiler, and were they considered to be good or bad?

To the second direct interrogatory he saith—They were built by the West Point Foundry. I considered the engine and boiler good.

Third direct interrogatory—How were the engine and boiler proportioned to the boat?

To the third direct interrogatory he saith—I consider them well proportioned.

Fourth direct interrogatory—Was or was not the blast from the blowers sufficiently strong to carry coal sparks up the smoke pipe?

To the fourth direct interrogatory he saith—I think it was at times, when the blast was on.

Fifth direct interrogatory—Did you know what the object was of having the drawing of the Lexington's boiler, marked schedule "D," made at the time it was made?

To the fifth direct interrogatory he saith—I did not.

Sixth direct interrogatory—What was the wood work over the boiler to which the zinc was attached, as you have stated in your cross examination?

To the sixth direct interrogatory he saith—The boiler deck. The zinc was not attached to the wood work, but was laid over the boiler.

Seventh direct interrogatory—You have said the brick bridge wall was twelve inches thick below the water bridge wall, was this before or after the last alterations?

To the seventh direct interrogatory he saith—It was put in so, when the first alterations were made to burn coal; it was then put in new. The only alteration made afterwards was in building it up higher.

To the eighth direct interrogatory he saith—Were the water bridge walls hollow or solid?

To the eighth direct interrogatory he saith—They were hollow.

Ninth direct interrogatory—What were they filled with, and with what were they connected?

To the ninth direct interrogatory he saith—They were filled with water, and connected with the water legs of the boiler.

Tenth direct interrogatory—Was there, or was there not, a free circulation of water through the water legs and water bridge walls?

To the tenth direct interrogatory he saith—There was a free circulation of water.

In reading over the deposition, I wish to make the following corrections: I have stated that the sides of the furnace, between the leg of boiler and the ash pan, were lined with brick work, and that this was done to prevent the air from escaping, and the fire from igniting the wood work outside. I would add, that it was also done to prevent the coal, at the time of drawing the fire, from warping the iron under the legs of the boiler. The fire is drawn when the boat comes into port; it was done by opening the fire bars and letting the coal drop into the cast iron ash pan. I have stated too, that the blowers would make nine hundred revolutions to seventeen of the engine. This, however, would depend on the tightness of the belts. I think, ordinarily, they would not make more than six or seven hundred revolutions.

T. F. SECOR.

Sworn before me, this eighth day of April, 1842, having been first read and subscribed by the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Charles B. Smith.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this twelfth day of April, in the year of

our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, late owners of the steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared Charles B. Smith, to testify and the truth to say, on the part and behalf of the defendants, in the above-mentioned matter.

And the said Charles B. Smith being about the age of twenty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Charles B. Smith, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—In whose employ are you now, how long have you been in their employ, in what capacity, and on board what boats?

To the first interrogatory he saith—I am in the employ of the defendants. I have been employed by them about four years. I was a fireman until a year ago last March, and since that time have been assistant engineer. I have been employed in the Providence, Rhode Island, Lexington, Mohegan, and Massachusetts. I am now on board the Massachusetts.

Second interrogatory—When did you go on board the Lexington, and how long were you on board of her?

To the second interrogatory he saith—I went on board some time in December, 1839, and remained on board of her as fireman until she was lost.

Third interrogatory—How many furnaces had the Lexington in her boiler, and how many arches or main flues?

To the third interrogatory he saith—She had three furnaces, and six main flues, two in each furnace.

Fourth interrogatory—Which was the front of the boiler?

To the fourth interrogatory he saith—The boiler faced aft.

Fifth interrogatory—What was the space between the boiler and the ceiling on the side of the boat?

To the fifth interrogatory he saith—Between two and three feet.

Sixth interrogatory—Did your duty require you to go between the boiler and the side of the boat; and, if it did, what did you go there for?

To the sixth interrogatory he saith—I did go, and for the purpose of washing the boiler.

Seventh interrogatory—How did you wash it?

To the seventh interrogatory he saith—With the hose of the force pump.

Eighth interrogatory—Did the hose have a pipe to it; and, if it did, how long was it?

To the eighth interrogatory he saith—It had a pipe about two feet long.

Ninth interrogatory—Was there room enough between the boiler and the side of the boat to turn the pipe horizontally?

To the ninth interrogatory he saith—There was.

Tenth interrogatory—How often did you go in there to clean the boiler?

To the tenth interrogatory he saith—Once a week.

Eleventh interrogatory—What kind of fuel was used in the Lexington at the time you were on board of her?

To the eleventh interrogatory he saith—Coal; we started the fire with wood.

Twelfth interrogatory—How long was it after she was altered to burn coal that you went on board of her?

To the twelfth interrogatory he saith—At the time she was altered. I was on board of her a week, or it might have been less, before she was altered.

Thirteenth interrogatory—How many bridge walls had the Lexington?

To the thirteenth interrogatory he saith—One in each furnace.

Fourteenth interrogatory—Were the water legs connected? And if they were, by what?

To the fourteenth interrogatory he saith—They were connected by a pipe running from one to the other, called the bridge wall pipe.

Fifteenth interrogatory—What was the shape and size of this pipe; was it solid or hollow; and if hollow, what was it filled with?

To the fifteenth interrogatory he saith—The pipe was round; from twelve to fourteen inches in diameter; and was filled with water.

Sixteenth interrogatory—What were the bridge walls built of, and what was their shape and thickness?

To the sixteenth interrogatory he saith—They were built of brick and sheet iron; the length of one brick at the bottom and two at the top.

Seventeenth interrogatory—Which way did they bevel?

To the seventeenth interrogatory he saith—The front face was straight, and the back end was bevelled.

Eighteenth interrogatory—Where was the sheet iron work placed, how was it made, and to what was it fastened, and how was it kept in its place?

To the eighteenth interrogatory he saith—It was placed from the ash pan to the bridge wall pipe, bolted into the ash pan, and the sheets of iron lapped on to each other; the sheets lapped on to the front of the bridge wall pipe on the furnace side.

Nineteenth interrogatory—Was there any thing, and what, in the main flues, and behind the bridge wall, to keep the fire from dropping on to the kelsons, or the floor of the boat?

To the nineteenth interrogatory he saith—There were two separate tiers of sheet iron work, bricked and mortared over.

Twentieth interrogatory—How far did these tiers extend?

To the twentieth interrogatory he saith—From the bridge wall pipe to the back of the boiler.

Twenty-first interrogatory—Were all the main flues fitted in this way?

To the twenty-first interrogatory he saith—They were.

Twenty-second interrogatory—How did there happen to be two tiers of sheet iron and brick work?

To the twenty-second interrogatory he saith—On account of keeping the heat nearer the top part of the flues, and giving a better draft; that was the object of the second tier. The first tier is in all boats of that description of boiler.

Twenty-second interrogatory—How were these lower tiers supported?

To the twenty-second interrogatory he saith—By bearers or cross bars from one water leg to the other.

Twenty-third interrogatory—How were the upper tiers supported?

To the twenty-third interrogatory he saith—By tiers of brick, about four feet from each other, resting on the first tier of sheet iron work.

Twenty-fourth interrogatory—What was the sheet iron work covered with?

To the twenty-fourth interrogatory he saith—Brick and mortar. The brick was laid in tight, and the crevices filled with mortar.

Twenty-fifth interrogatory—What was the thickness of the iron which was used to make this sheet iron work, and was it good or bad?

To the twenty-fifth interrogatory he saith—It was from an eighth to three-sixteenths of an inch, and was good.

Twenty-sixth interrogatory—Who put up this second course of sheet iron and brick work?

To the twenty-sixth interrogatory he saith—William Quimby, second engineer, and myself.

Twenty-seventh interrogatory—Under whose direction was it done?

To the twenty-seventh interrogatory he saith—Courtland Hempstead, the first engineer.

Twenty-eighth interrogatory—Did he examine it after it was done?

To the twenty-eighth interrogatory he saith—He examined it at the time we were putting it in.

Twenty-ninth interrogatory—Was it done faithfully or carelessly?

To the twenty-ninth interrogatory he saith—It was done as well as it could be done.

Thirtieth interrogatory—Was Courtland Hempstead satisfied with it or not, after it was done?

To the thirtieth interrogatory he saith—He said he thought it was done well.

Thirty-first interrogatory—Who put up the brick bridge wall?

To the thirty-first interrogatory he saith—It was done by a couple of Irishmen, whom I did not know.

Thirty-second interrogatory—Who assisted you and Quimby in putting up this second course of sheet iron and brick work?

To the thirty-second interrogatory—The firemen and coal heavers.

Thirty-third interrogatory—Did or did not Mr. Frederick Hempstead assist you in putting it up?

To the thirty-third interrogatory he saith—He did not.

Thirty-fourth interrogatory—When was this second course of sheet iron and brick work put up—before or after she commenced running, after being altered to burn coal?

To the thirty-fourth interrogatory he saith—It was one trip after she was altered to burn coal. She made one trip to Stonington and back, and then the sheet iron work was put in.

Thirty-fifth interrogatory—Was the brick bridge wall raised after she started or not; and if so, how much was it raised, and when was it done?

To the thirty-fifth interrogatory he saith—After she started at the time the sheet iron work was put in. I don't recollect how much it was raised, probably from six to twelve inches.

Thirty-sixth interrogatory—What kind of bricks were used in building the brick bridge wall, and what were they laid in?

To the thirty-sixth interrogatory he saith—Common red brick, with one tier of fire brick at the top; they were laid in fire clay and sand.

Thirty-seventh interrogatory—What was the size and shape of the grate bars?

To the thirty-seventh interrogatory he saith—They were between four and five feet long, and an inch or an inch and a quarter wide at the top, and from four to five inches deep in the middle, and from two to three deep at the ends.

Thirty-eighth interrogatory—How often those grate bars, or any of them, melted down or burnt out, while you were on board the Lexington?

To the thirty-eighth interrogatory he saith—There were none, to my knowledge, at any time.

Thirty-ninth interrogatory—Should you, or should you not, have known it if there had been?

To the thirty-ninth interrogatory he saith—I think I should; it was a part of my business to look after the grate bars.

Fortieth interrogatory—Will grate bars melt soonest with or without blowers?

(Objected to by counsel for plaintiffs.)

To the fortieth interrogatory he saith—They will melt soonest without blowers.

Forty-first interrogatory—Why will they melt soonest without blowers?

(Objected to by counsel for plaintiff.)

To the forty-first interrogatory he saith—Because there is not so much circulation of air without blowers as with; and there is not so much dead heat with blowers.

Forty-second interrogatory—Did you ever know grate bars to melt on board any of the boats of which you have been fireman; if yea, what boats, and did they use blowers or not?

To the forty-second interrogatory he saith—I have known them to melt on board the Jackson, without blowers.

Forty-third interrogatory—How much steam could you ordinarily get on the Lexington while burning coal with the blowers on?

To the forty-third interrogatory he saith—From ten to sixteen inches with the blowers.

Forty-fourth interrogatory—What was the most you ever got with the blowers on?

To the forty-fourth interrogatory he saith—Seventeen inches.

Forty-fifth interrogatory—Was the throttle valve open or shut?

To the forty-fifth interrogatory he saith—We ran with it open, because we could get more steam.

Forty-sixth interrogatory—Did you ever know the Lexington, while burning coal, to run without blowers; and, if so, how much steam did she carry?

To the forty-sixth interrogatory he saith—I have known her to run without blowers, and she carried from three to nine inches.

Forty-seventh interrogatory—When was this?

To the forty-seventh interrogatory he saith—At the time she broke her blowers; she did so several times. She would break the belt to the blowers, and as soon as she did so, the steam would run down.

Forty-eighth interrogatory—What was the ordinary length of passage of the Lexington from New York to Stonington, and from Stonington to New York?

To the forty-eighth interrogatory he saith—From eight hours and a half to nine and a half.

Forty-ninth interrogatory—Was the Lexington ever much over nine hours and a half from New York to Stonington, or from Stonington to New York; and, if so, what was the occasion of it?

To the forty-ninth interrogatory he saith—She was over that time once, when her blowers broke down, and there was a gale of wind; it was the first of January. She did not arrive at New York until some time in the afternoon. She left Stonington the evening before. She then carried, some of the time, three inches, and some of the time as high as nine inches of steam.

Fiftieth interrogatory—Who was the engineer on board of her at that time?

To the fiftieth interrogatory he saith—Courtland Hempstead.

Fifty-first interrogatory—Do you recollect any other long trip; and, if so, when was it?

To the fifty-first interrogatory he saith—I don't recollect of any other.

Fifty-second interrogatory—Where was the wood stowed that was carried on board the Lexington?

To the fifty-second interrogatory he saith—Generally alongside the boiler.

Fifty-third interrogatory—How many tiers of wood were there, and how high were they?

To the fifty-third interrogatory he saith—From three to four tiers on each side; the front tier was piled up to the main deck, next to the head of the boiler. The other tiers were piled up as high as the bottom of the water legs, which would be two or three feet high.

Fifty-fourth interrogatory—What was the reason of the difference in height of the tiers?

To the fifty-fourth interrogatory he saith—So that we need not have to take so much out, when we washed the boiler.

Fifty-fifth interrogatory—How often did the Lexington take fire, while you were on board of her, before she was lost?

To the fifty-fifth interrogatory he saith—But once to my knowledge, and that was coming round the battery into New York.

Fifty-sixth interrogatory—Before she was burnt, how often did you hear of her being on fire?

To the fifty-sixth interrogatory he saith—Never but once.

Fifty-seventh interrogatory—Since she was destroyed, have you ever heard of her being on fire before, and how did you hear it?

To the fifty-seventh interrogatory he saith—I have heard so, and from Frederick Hempstead's affidavit.

Fifty-eighth interrogatory—How many other persons who belonged to the Lexington, were there whose name was Charles Smith?

To the fifty-eighth interrogatory he saith—None, I am certain.

Fifty-ninth interrogatory—Were you on board the Lexington when Mr. Frederick Hempstead acted as engineer in the place of his brother?

To the fifty-ninth interrogatory he saith—I was.

Sixtieth interrogatory—Was or was not the Lexington, or any part of her, or the wood, on fire during that trip, to your knowledge?

To the sixtieth interrogatory he saith—It was not, that I know of.

Sixty-first interrogatory—Did you or did you not, at any time before the loss of the Lexington, hear that she or her wood had been on fire at that trip.

To the sixty-first interrogatory he saith—I did not.

Sixty-second interrogatory—Were you or were you not called upon during that trip, by Mr. Frederick Hempstead, or by any one else, to assist in putting out any fire on board that boat, before you got to Stonington?

To the sixty-second interrogatory he saith—I was not.

Sixty-third interrogatory—Do you know whether or not either of the bridge walls, or any part of them, fell down or were forced down during that trip?

To the sixty-third interrogatory he saith—I do not.

Sixty-fourth interrogatory—Did you or did you not, before the loss of the Lexington, hear that either of the bridge walls, or any part of them, had fallen down or been forced down on that trip?

To the sixty fourth interrogatory he saith—I did not.

Sixty-fifth interrogatory—Did you or did you not ever know that either of the bridge walls, or any part of them, gave way from the time you went on board the Lexington until she was lost; and if yea, when was it?

To the sixty-fifth interrogatory he saith—I did not.

Sixty-sixth interrogatory—Would you have been likely to have heard it, if it had been so; and if yea, why?

(Objected to by counsel for plaintiff.)

To the sixty-sixth interrogatory he saith—I should have been likely

to have heard it, because when such a thing happens, some of the firemen are called upon, and it is likely to be known to all of us.

Sixty-seventh interrogatory—Into how many watches are the firemen divided?

To the sixty-seventh interrogatory he saith—Into two.

Sixty-eighth interrogatory—Was it the practice on board the Lexington for the watch, who is relieved, to make report to the watch who relieved them?

To the sixty-eighth interrogatory he saith—They did not make a general report, but if any thing serious happened, they reported it.

Sixty-ninth interrogatory—Did you or did you not, on the trip on which Mr. Frederick Hempstead went as engineer, assist in putting out any fire on board the Lexington, between New York and Stonington?

To the sixty-ninth interrogatory he saith—I did not.

Seventieth interrogatory—Did you or did you not, during that trip, assist in passing out any wood from the fire room to the main deck?

To the seventieth interrogatory he saith—I did not.

Seventy-first interrogatory—Did you or did you not, know of any, or hear of any, wood being passed out from the fire room to the main deck on that trip?

To the seventy-first interrogatory he saith—I did not; there was none passed out that I know of.

Examination adjourned, by consent of parties, to Wednesday, April 13th, 1842, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Wednesday, April 13th, 1842.—At the time and place of adjournment, personally appeared before me, the above named Charles B. Smith, to testify and the truth to say, on the part of the defendants in the above mentioned matter; and the examination of the said Charles B. Smith was continued as follows, viz:

Seventy-second interrogatory—Do you know where Berg's ship yard, in the city of New York was, in January, 1840?

To the seventy-second interrogatory he saith—I do.

Seventy-third interrogatory—Did you ever know that the Lexington, or the wood on board of her, was on fire abreast of Berg's ship yard, on the trip on which Frederick Hempstead was engineer, or on any other trip; and, if yea, state what you know about it?

To the seventy-third interrogatory he saith—I did not.

Seventy-fourth interrogatory—Did you ever know or hear, before the loss of the Lexington, that the bridge wall was discovered to have given way opposite Berg's ship yard?

To the seventy-fourth interrogatory he saith—I never did.

Seventy-fifth interrogatory—Did you or did you not ever know any of the iron work, in the furnaces of the Lexington, to have been melted down; and, if yea, when, and under what circumstances?

To the seventy-fifth interrogatory he saith—I never did.

Seventy-sixth interrogatory—Did you or did you not, before the loss of the Lexington, hear that such had been the case?

To the seventy-sixth interrogatory he saith—I never did.

Seventy-seventh interrogatory—Have you ever heard, since the loss of the Lexington, that such had been the case; and, if so, how did you hear it?

To the seventy-seventh interrogatory he saith—I heard so, and from Frederick Hempstead's affidavit. I did not hear so from any other source. The affidavit was one read to me by Mr. Bowdoin yesterday. (This affidavit is the deposition of Hempstead, taken before Mr. Bridgham, in this cause.)

Seventy-eighth interrogatory—Do you know whether or not either of the bridge walls of the Lexington, or any part of them, were melted on the trip to Stonington, when Mr. Frederick Hempstead acted as engineer?

To the seventy-eighth interrogatory he saith—I do not.

Seventy-ninth interrogatory—Have you any, and what, reason to suppose that you would have known it had such been the case?

To the seventy-ninth interrogatory he saith—I should have known it, because it is the firemen's duty to attend to it, and help put it up.

Eightieth interrogatory—You have stated that the Lexington took fire once, in coming round the battery to New York, state what you know about that fire, the cause of it, what part of the vessel took fire, and what damage was done?

To the eightieth interrogatory he saith—She caught fire by the dampers being let go by accident, which threw the sparks out the furnace doors, which flew up and caught the under side of the main deck. The fire burnt thro' the deck, and set fire to the corner of a box of goods, but did not damage the goods. The fire burnt about ten inches or a foot of the deck.

Eighty-first interrogatory—What was the fuel in the furnaces at this time?

To the eighty-first interrogatory he saith—Coal and wood.

Eighty-second interrogatory—How was the damper in the smoke pipe of the Lexington opened and closed?

To the eighty-second interrogatory he saith—It was opened by a chain, which led from one end of the lever down into the fire room. The chain was fastened to a hook which bent downwards. The damper was shut by letting go the chain, and the weight of a ball on the opposite end of the lever closed it. It was necessary to pull down the chain to clear it of the hook. The hook had a short curve.

Eighty-third interrogatory—Is it usual to arrange dampers in this way; and, if it is not, why was the damper of the Lexington so arranged?

(Objected to [by] counsel for plaintiff.)

To the eighty-third interrogatory he saith—It is not usual. The Lexington was so arranged in order to be sure and keep the damper open. I don't know of any other reason.

Eighty-fourth interrogatory—Whose business was it to see that the damper was kept open?

To the eighty-fourth interrogatory he saith—The fireman's and engineer's both. The firemen would get their faces burnt if they did not attend to it.

Eighty-fifth interrogatory—When you fired up on the passage on board the Lexington, did you or did you not throw off the blowers?

To the eighty-fifth interrogatory he saith—I never did.

Eighty-sixth interrogatory—Did or did not Mr. Frederic Hempstead assist in putting up the bridge wall, at the time the last alterations were made?

To the eighty-sixth interrogatory he saith—He did not. I was present myself and know it.

Eighty-seventh interrogatory—Under whose inspection was the bridge wall put up and arranged at that time?

To the eighty-seventh interrogatory he saith—Mr. Courtland Hempstead.

Eighty-eighth interrogatory—If the bridge wall had fallen down, was there any thing to prevent the fire from being blown through, on to the floor of the boat?

To the eighty-eighth interrogatory he saith—There was; the iron work behind the brick bridge wall, of which I have before spoken.

Eighty-ninth interrogatory—How many times was the boiler of the Lexington patched while you were on board of her?

To the eighty-ninth interrogatory he saith—But once, to my knowledge; at the time Mr. Frederick Hempstead went as engineer.

Ninetieth interrogatory—Do boilers, in which wood is used, ever require patching over the furnaces?

To the ninetieth interrogatory he saith—They sometimes do.

Ninety-first interrogatory—How were the ash pans, under the boiler, filled, and with what?

To the ninety-first interrogatory he saith—They were filled with water, by pouring it in with a bucket; water was kept in them all the time.

Ninety-second interrogatory—How much space had you to throw the water in?

To the ninety-second interrogatory he saith—A space the whole width of the boiler, about a foot high. There was a platform on which you stood to fire up, built within a foot of the front of the boiler, and as high as the top of this space. The platform was made of wood. I don't recollect whether it was covered with any thing or not.

Ninety-third interrogatory—How many fire buckets were there belonging to the fire room?

To the ninety-third interrogatory he saith—A half a dozen.

Ninety-fourth interrogatory—Mr. Frederick Hempstead has stated that there was mortar carried in one of them; was this so, and what was it for?

To the ninety-fourth interrogatory he saith—It was to put over the dampers, in front of the boiler, to keep the air from escaping. These dampers filled up the space in front of the boiler, between that and the

ash pan. This was the space through which we put the water into the ash pans.

Ninety-fifth interrogatory—Did you ever know of any thing freezing in the fire room?

To the ninety fifth interrogatory he saith—I never did.

Ninety-sixth interrogatory—Where was the wood that you used in the furnaces stowed?

To the ninety-sixth interrogatory he saith—A part of it alongside the boiler, and a part on top of the coal, in the fire room.

Ninety-seventh interrogatory—What was the condition of the hull, engine and boiler, as far as you know, when you were on board the Lexington?

To the ninety-seventh interrogatory he saith—I never examined the hull, and don't know any thing about it. The engine and boiler were in good order.

Ninety-eighth interrogatory—Had or had not the Lexington a fire engine; if yea, where was it stowed generally, and where particularly, at the time she was lost?

To the ninety-eighth interrogatory he saith—She had a fire engine, stowed inside the forward bulk-head, under the promenade deck, about midships, between the doors that lead on to the forecastle deck. She was there about an hour before the boat was lost.

Ninety-ninth interrogatory—Was there or not a tool chest on board the Lexington; and, if yea, what tools did it contain?

To the ninety-ninth interrogatory he saith—There was a tool chest containing augers, hatchet, an axe, planes, a saw, wrenches, chisels and other tools.

One hundredth interrogatory—Were you on board the Lexington on the night she was lost?

To the one hundredth interrogatory he saith—I was.

One hundred and first interrogatory—Where were you, when you first heard the alarm of fire, and about what time was it, and how did you hear of it?

To the one hundred and first interrogatory he saith—I was in my room on the guard opposite where I first saw the fire. I was asleep. I was called by a coal heaver by the name of Henry Read; he said the boat was all on fire. I jumped out of my birth, and saw the fire midships or opposite my room; my room was on the starboard side. The first fire I saw was round the steam chimney casing, on the promenade deck; it had then extended two or three feet from the steam chimney on the side I was on. This was the only fire I saw; there was no cotton on fire that I saw. I did not notice that the steam chimney casing was burnt much below the deck. The casing extended up to the promenade deck. I was waked about half-past seven. We were then about four miles to the eastward of Huntington Light. I went from my room into the crank room, and took down the hose which hung upon the bulk-head, alongside the air-pump, and screwed the hose on to the pipe which leads to the force-pump; I then opened the

cock, and undertook to straighten out the hose to play on the fire. This cock led the water in from the engine's force pump into the hose. The fire and smoke were so excessive that they stopt me. I then went aft, and tried to get down the fire buckets from over the shaft; but there was so much fire and smoke that I had to leave that. This was all I did to put out the fire, having made up my mind that nothing more could be done.

Cross examination.

First cross interrogatory—Can you recollect certainly whether or not there were more than six main flues in the furnaces of the Lexington?

To the first cross interrogatory he saith—I cannot; I recollect that there were nine return flues.

Second cross interrogatory—What was there behind the boiler?

To the second cross interrogatory he saith—A bulk-head, made of wood; it was about eight or ten inches from the boiler. I could crowd in between the bulk-head and the boiler when the boiler was cold.

Third cross interrogatory—What was there over the boiler?

To the third cross interrogatory he saith—A wooden covering. I can't tell what it rested on; there were carlines under it, but they did not rest on the top of the boiler.

Fourth cross interrogatory—What did the bottom of the bridge wall rest on?

To the fourth cross interrogatory he saith—It rested on the flange of the ash pan. The flange is the side that turns up; it was three or four inches high. The sheet iron which supported the bridge wall was bolted on to this flange, and ran horizontally the thickness of the bridge wall at the bottom, and then turned up.

Fifth cross interrogatory—How high was the bridge wall after it was raised?

To the fifth cross interrogatory he saith—About three feet.

Sixth cross interrogatory—When you threw the water into the ash pans, did it spatter the bottom of the bridge wall, or wash up on to it?

To the sixth cross interrogatory he saith—I don't know that it did. The ashes in the pan would sometimes extend a quarter way up the bridge wall.

Seventh cross interrogatory—When the main flues were contracted, did you use any new sheet iron or new brick about the work?

To the seventh cross interrogatory he saith—Some of the iron was new and some old. The brick was all new. We got the iron all from Murphy. I don't know where the brick came from; it came down and was put on the dock. I helped bring the brick on board the boat. It was common red brick, with some fire brick.

Eighth cross interrogatory—Which makes the hottest fire in a steamboat boiler, wood or coal?

To the eighth cross interrogatory he saith—Coal makes a more intense heat.

Ninth cross interrogatory—What is the effect of blowers, such as the Lexington had, on a coal fire?

To the ninth cross interrogatory he saith—It makes more draft and spreads the heat through the boiler.

Tenth cross interrogatory—Did the wood beside the boiler remain there from trip to trip, a considerable time?

To the tenth cross interrogatory he saith—It did, with the exception of the first tier, which was taken down once a week to clean the boiler.

Eleventh cross interrogatory—What was Courtland Hempstead's opinion as to the danger of fire in the Lexington?

To the eleventh cross interrogatory he saith—I never heard him say any thing about it.

Twelfth cross interrogatory—Did you ever hear him say that he had no confidence in the bridge wall?

To the twelfth cross interrogatory he saith—I never did.

Thirteenth cross interrogatory—Did you know that he intended leaving the boat soon after her last trip?

To the thirteenth cross interrogatory he saith—I did not; his calculation was to stay, as far as I know.

Fourteenth cross interrogatory—When you went the trip with Frederick Hempstead as engineer, which was your watch?

To the fourteenth cross interrogatory he saith—I don't recollect. If that trip was on the third of January, as stated in Hempstead's affidavit, I must have been on the last watch.

Fifteenth cross interrogatory—In the case of the fire which you have said you knew of, on board the Lexington, how do you know that it was occasioned by the closing of the damper?

To the fifteenth cross interrogatory he saith—The man in the fire room told me that some one had taken hold of the chain, and let it go; any one could take hold of the chain and close the damper.

Sixteenth cross interrogatory—If the sparks were blown out of the furnace door, where would they naturally go to?

To the sixteenth cross interrogatory he saith—They would either fall on the deck, or pass up through the grating over the front of the boiler; some of them might pass over the boiler, and up through the casing of the steam chimney.

Seventeenth cross interrogatory—How thick was the deck where it took fire, as you mentioned, and how could it have burnt through the deck without being discovered?

To the seventeenth cross interrogatory he saith—It was about two inches thick; I can't tell why it was not discovered.

Eighteenth cross interrogatory—Was the fireman, who then had charge, discharged?

To the eighteenth cross interrogatory he saith—He was not.

Nineteenth cross interrogatory—Was any additional precaution against fire adopted, in consequence of that fire, and what was it?

To the nineteenth cross interrogatory he saith—There was; the chain, after that, was wired to the hook, so that no one could unhook it, without taking the wire off; to do this, you must go into the fire room.

Twentieth cross interrogatory—Was any watch kept on deck during the night, and how many were there?

To the twentieth cross interrogatory he saith—There was always; there were always two deck hands somewhere about the deck.

Twenty-first cross interrogatory—Who discovered the fire off the battery?

To the twenty-first cross interrogatory he saith—I don't know.

Twenty-second cross interrogatory—Did you plaster up the dampers in front of the boiler, every time you poured water into the ash pan?

To the twenty-second cross interrogatory he saith—We did. We did it once every hour and a half, or two hours.

Twenty-third cross interrogatory—Did you ever see the fire engine on board the Lexington worked; and, if so, when, for the last time?

To the twenty-third cross interrogatory he saith—I have seen it worked; I don't recollect the last time. I have seen it worked several times to wash the boiler. I can't recollect that I ever saw it worked after she left Secor's the last time.

Twenty-fourth cross interrogatory—Did you know of any buckets having ropes rigged to them?

To the twenty-fourth cross interrogatory he saith—There was one in the fire room and one on deck; I did not know of any others.

Twenty-fifth cross interrogatory—What did Captain Childs do when you first saw him after discovering the fire?

To the twenty-fifth cross interrogatory he saith—I did not see him make any effort to save any one. I don't know that he did any thing. I am sorry that I cannot give a better account of Captain Childs. I heard him ask the engineer if he could stop the boat, and I heard him say he could not.

Twenty-sixth cross interrogatory—Did you ever see the chimney of the Lexington red hot, and how high up?

To the twenty-sixth cross interrogatory he saith—I have seen it so frequently to the height of ten or twelve feet above the promenade deck.

Twenty-seventh cross interrogatory—On the trip when the Lexington was lost, did she carry about the usual quantity of freight, and of what did it consist?

To the twenty-seventh cross interrogatory he saith—She had about the usual quantity of freight, and it consisted mostly of cotton.

Twenty-eighth cross interrogatory—Was she in the habit of carrying as much freight as she could take in, at that time?

To the twenty-eighth cross interrogatory he saith—I suppose she took in as much as came. The whole of one gangway was open fore and aft, at the time of her loss.

Twenty-ninth cross interrogatory—Was the cotton piled up to the casing of the steam chimney?

To the twenty-ninth cross interrogatory he saith—It was piled up against it, or very close to it. The boiler deck was covered with cotton.

Thirtieth cross interrogatory—On the trip on which she was lost, was the Lexington, her wood or freight, on fire before she got out of the East River?

To the thirtieth cross interrogatory he saith—Not to my knowledge; I never said so to Frederick Hempstead.

Thirty-first cross interrogatory—How soon after the loss of the Lexington did you have a conversation with Frederick Hempstead?

To the thirty-first cross interrogatory he saith—About a fortnight or three weeks. I don't recollect that we had any particular conversation about the Lexington. We talked, I now recollect, about the loss of the boat, about his brother Courtland Hempstead, how much he was burnt, &c.

Direct examination resumed.

First direct interrogatory—Did you ever know of the smoke pipe of any other boat but the Lexington being red hot?

To the first direct interrogatory he saith—I do. I have seen the smoke pipe of the Jackson red hot from the bottom to the top. She burnt coal without blowers.

Second direct interrogatory—Did you ever see the flanges of the Lexington red hot, and where were the flanges situated?

To the second direct interrogatory he saith—I never did. The flanges run from the top of the steam chimney to within an inch of the promenade deck.

Third direct interrogatory—Do you or do you not know, or have you any reason to believe, that Courtland Hempstead intended to remain on board the Lexington as engineer; and, if yea, what reason?

(Objected to by counsel for the plaintiff.)

To the third direct interrogatory he saith—I believe he intended to remain, because he promised me the berth of assistant engineer in the spring.

CHARLES B. SMITH.

Sworn before me, this 14th day of April, 1842, having been first read and subscribed by the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Jacob H. Vanderbilt.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New

Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared Jacob H. Vanderbilt, to testify and the truth to say, on the part and behalf of the defendants, in the above-mentioned matter.

And the said Jacob H. Vanderbilt being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Jacob H. Vanderbilt, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—What is your occupation at the present time, and how long have you been engaged in it?

To the first interrogatory he saith—I am a steamboat captain, and have been such for fifteen years.

Second interrogatory—In whose employment are you now, and how long have you been in their employ?

To the second interrogatory he saith—I am in the employment of the New Jersey Steam Navigation Company, and have been in their employ upwards of three years.

Third interrogatory—Were you acquainted with the Lexington; were you employed on board of her; if so, in what capacity, and for how long?

To the third interrogatory he saith—I was captain of her, and always commanded her from the time she was built, which was about five years. She was five years old when lost. Captain Childs was temporarily in my place at the time she was lost, as I was at that time sick.

Fourth interrogatory—Did you see the Lexington on the stocks while building; were you familiar with the construction of her hull; and, if so, give a description of her mode of construction?

To the fourth interrogatory he saith—I was present all the time while she was being built. She was heavily timbered, double-framed, fore and aft, which is unusual excepting in sea-boats; the space between the frames was about five or six inches. She was ceiled double, fore and aft, with yellow pine two-inch plank; the first ceiling was fore and aft, and the other diagonally. She was twelve inches higher in the middle than at the ends, forming an arch, and increasing her strength. Her clamps were let over each timber, making a solid side, and a key driven between each timber and the clamp. This was as no other boat at that time was ever built. Her ceiling was corked fore and aft. I was in her for five years, and never saw her grieved or bend.

Fifth interrogatory—What was the construction of her engine and boiler?

To the fifth interrogatory he saith—She had a beam engine, forty-eight inch cylinder, and eleven feet stroke. She had one iron boiler below; the dimensions of the boiler were, fourteen feet wide, sixteen feet long, and nine feet high.

Sixth interrogatory—After she became the property of the defendants, were there any alterations and repairs put upon her hull, boiler and engine; and, if so, what were they, and when were they made?

To the sixth interrogatory he saith—When the defendants bought her, she was laid up; it was in winter, in January, 1839. They immediately overhauled her, which consisted in putting hips on her hull to make her stiffer; overhauling her boiler at the expense of almost a new boiler; the boiler was as good as a new one. We did not remove it on account of the difficulty of getting it in and out. In the fall of the same year, she was fitted for burning coal, by my suggestion, and under my superintendence. I employed Mr. Courtland Hempstead, the engineer, as being the most practical man, having been employed by Mr. Allaire in his boats on the Charleston line, in which they burnt coal. Mr. Hempstead was paid the highest wages, and I believed him to be the best man for that purpose to be found in the city of New York. This was a fortnight or three weeks previous to her being burnt. She was hauled out on the dry dock and put in first-rate order. It cost about three hundred and seventy-five dollars to haul her out.

Seventh interrogatory—In what manner, as regards workmanship, were the alterations made to enable coal to be used on board the Lexington?

(Objected to by counsel for the plaintiff.)

To the seventh interrogatory he saith—I believe it was done in the best possible manner; there was no expense spared. The expense was left entirely to my dictation.

Eighth interrogatory—Was there any, and what, precaution taken against fire in making these alterations, other than those taken in other boats?

(Objected to by counsel for plaintiff.)

To the eighth interrogatory he saith—There was; while on the dry dock, we put in a cast iron pipe of ten inches diameter, down in front of her boiler, in order to have water handy to put out coals, and to use generally for the protection of the boat against fire.

Ninth interrogatory—What was the condition of the hull, engine and boiler, after the last alterations you have spoken of?

To the ninth interrogatory he saith—I think the boat was better fitted than at any time I was aboard of her.

Tenth interrogatory—How high was the cast iron pipe, of which you have spoken; was it closed or not at the top, and how was the water obtained from it?

To the tenth interrogatory he saith—It was about seven feet high, coming up about as high as the top of the furnace doors, and was about six feet from the head of the boiler. It was open at the top and had a large cock at the bottom where the water was.

Eleventh interrogatory—How was the Lexington steered?

To the eleventh interrogatory he saith—By iron rods midships—say one hundred and fifty feet in length, and hide rope at each end of them. She had a steering apparatus aft, attached to her tiller; the tiller was always shipped.

Twelfth interrogatory—Was she fitted with a fire engine; and, if so, where was it carried?

To the twelfth interrogatory he saith—She had a fire engine and suction hose; it was carried inside the forward bulk-head, between the two doors.

Thirteenth interrogatory—State the dimensions of the Lexington?

To the thirteenth interrogatory he saith—She was two hundred and eight foot keel, twenty-one feet six inches beam, eleven feet and a half hold.

Fourteenth interrogatory—Was coal ever burnt in the Lexington before she was bought by the defendants?

To the fourteenth interrogatory he saith—It was frequently, both hard and soft; with hard coal, she did not keep the usual quantity of steam. It was used as extra fuel, in case of emergency.

Fifteenth interrogatory—How many fire buckets were there attached to the Lexington?

To the fifteenth interrogatory he saith—I don't know; she had a large supply; several dozens; as much as three at least.

Sixteenth interrogatory—What alterations were necessary to enable the Lexington to burn coal instead of wood?

To the sixteenth interrogatory he saith—To raise her bridge wall higher, put in a different kind of grate bars, and to put in blowers.

Cross examination.

First cross interrogatory—Have you now, or have you ever, had any stock in the New Jersey Steam Navigation Co., or any interest in any part of their property?

To the first cross interrogatory he saith—No, sir.

Second cross interrogatory—What was there over the boiler of the Lexington?

To the second cross interrogatory—First, there was zinc laid over the top of the boiler, and then a deck about eight or ten inches above the boiler; that deck was coppered on top. The deck rested on combings on each side.

Third cross interrogatory—When did you make the last trip on board the Lexington?

To the third cross interrogatory he saith—Just previous to her being hauled up for repairs. I did not go in her after she was altered to burn coal.

Fourth cross interrogatory—Did you know of her being on fire, and how many times after she was altered to burn coal, and before her last trip, either the boat, wood, or freight?

To the fourth cross interrogatory he saith—I never did; I heard she was on fire, on deck, under a box of goods. (Objected to by counsel for defendants as hearsay.) That fire I refer to, was supposed to have originated from the kitchen fire, as it occurred opposite the kitchen door and on top of the deck—so I was told. It occasioned some damage to a box of goods. That was the only fire I ever heard of previous to her being lost.

Fifth cross interrogatory—What was the steam chimney cased with, and how high did it extend?

To the fifth cross interrogatory he saith—The lower part, as high as the promenade deck, was cased with moveable wood; and above the promenade deck was iron, about four feet high.

Sixth cross interrogatory—What space was there between the steam chimney and the wood casing?

To the sixth cross interrogatory he saith—About eight inches, and about the same distance from the promenade deck.

Examination adjourned, by consent of parties, to Friday, April 15th, 1842, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

At the time and place of adjournment, personally appeared before me, the above named Jacob H. Vanderbilt, to testify and the truth to say, on the part of the defendants, in the above mentioned matter; and the examination of the said Jacob H. Vanderbilt was continued as follows, viz:

Seventh cross interrogatory—What was the material of the steam chimney casing?

To the seventh cross interrogatory he saith—The usual wood—pine.

Eighth cross interrogatory—If sparks were blown out of the furnace doors, what course would they naturally take.

To the eighth cross interrogatory he saith—They would come directly out; some of them would fall and some ascend.

Ninth cross interrogatory—In particular states of the draft, might not the sparks be driven up the steam chimney casing?

To the ninth cross interrogatory he saith—I should think it very improbable indeed. There was, nevertheless, a clear passage of about two inches, through which the sparks might go up. The passage was narrowed to two inches, between the head of the boiler and the large guard beam.

Tenth cross interrogatory—Which causes the most intense heat in a steam boiler furnace—coal driven by blowers, such as the Lexington had, or wood?

To the tenth cross interrogatory he saith—Coal, a considerable more.

Eleventh cross interrogatory—Are greater precautions against fire requisite, about a furnace burning coal, than one burning wood?

To the eleventh cross interrogatory he saith—I think not as much, coal is more easily managed; there are no sparks from it; I consider coal much less dangerous than wood, as a general rule.

Twelfth cross interrogatory—Was the steam chimney casing always kept in its place?

To the twelfth cross interrogatory he saith—Sometimes it was taken away in cold weather, to allow persons to warm themselves. It was sometim s kept down for several months. In summer it was generally kept up.

Thirteenth cross interrogatory—How long were the ropes running from the ends of the iron rods to the wheel on each side?

To the thirteenth cross interrogatory he saith—From fifteen to twenty feet. I mean that that was the length from the end of the rods to the point where they turned to go up to the wheel; there was about the same length at the after end of the rods.

Fourteenth cross interrogatory—How long, before the loss of the Lexington, did you see her fire engine worked?

To the fourteenth cross interrogatory he saith—Several weeks; she was laid up during that time; previous to that time, I saw it used constantly in washing decks.

Fifteenth cross interrogatory—How was the steam chimney situated as respects the head of the boiler?

To the fifteenth cross interrogatory he saith—It was situated directly over the front of the boiler, and projecting a little over the front of the boiler.

Sixteenth cross interrogatory—Was the Lexington insured?

To the sixteenth cross interrogatory he saith—I heard that she was insured for about twenty thousand dollars; I think I heard so from Mr. Handy.

Seventeenth cross interrogatory—How many trips had Captain Childs made on board the Lexington before her loss?

To the seventeenth cross interrogatory he saith—I should think he was on board of her two or three weeks. I don't know how many trips she made. At the time he went on board of her he was unaccustomed to the boat or crew. He had the temporary command of her about a year before for two or three weeks.

Direct examination resumed.

First direct interrogatory—Was the deck frame of the Lexington ever altered after she was built?

To the first direct interrogatory he saith—It was never altered.

J. H. VANDERBILT.

Sworn before me, this fifteenth day of April, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of David Crowley.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this fifteenth day of April, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and le-

gally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared David Crowley, to testify and the truth to say, on the part and behalf of the defendants, in the above mentioned matter.

And the said David Crowley being about the age of twenty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said David Crowley, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—In whose employment are you now, in what capacity, and how long have you been so employed?

To the first interrogatory he saith—I am in the employ of the defendants, as mate of the Mohegan. I have been employed by them as first or second mate for five years.

Second interrogatory—Were you ever employed on board the Lexington; and, if so, what capacity, and when?

To the second interrogatory he saith—I was employed on board the Lexington as second mate in the summer and fall of 1839, and until she was lost in 1840.

Third interrogatory—Were you on board of her on the trip on which she was lost?

To the third interrogatory he saith—Yes, sir.

Fourth interrogatory—Whose business was it to see to the stowing of freight on board of her?

To the fourth interrogatory he saith—It was mine.

Fifth interrogatory—State what the freight consisted of on the trip on which she was lost, and how it was stowed?

To the fifth interrogatory he saith—It consisted principally of cotton, with some boxes of merchandise. It was stowed flatways thwart ships on the main deck, and two tiers on their flats on the boiler cover, each carried up three tiers high. There was one tier each side of the boiler deck. The cotton was stowed close to the boiler deck. The length of the cotton was across the boat. The tiers alongside the boiler deck ran the whole length of the boiler deck, they did not reach as far forward as the forward bulk-head. The space between the cotton and bulk-head was about ten feet; there was no freight between the cotton and the forward bulk-head. The forward bulk-head ran across the boat at the forward end of the promenade deck. There was a space of about three feet on each side of these tiers of cotton as a gangway fore and aft. There was one tier of cotton stowed on their ends, forward of the shaft, and abaft the boiler on each side. This was put against the side house, or wheel partition, at the sides of the boat; this left a gangway of about three feet, between the cotton and the partition of the engine. These gangways communicated by a passage way about ten feet wide. There was cotton aft of the shaft, stowed on their ends the same as forward of

the shaft, with the same space for gangways. The light freight or merchandise was on the top of the tiers of cotton, which stood on their ends. There was cotton stowed on the guard, alongside the ladies' cabin. There was in all one hundred and fifty-two bales of cotton. The light freight consisted of goods in ordinary packing boxes, some East India goods, about a dozen cases in light India boxes; a dozen bales of buffalo skins, some few barrels, some five or seven of clover seed. These were packed abaft the shaft on the top of the cotton. These facts are all fixed upon my mind, so that I remember them distinctly.

Sixth interrogatory—Had the Lexington a fire engine; where was it placed, in what order was it, and when was it last used previous to the loss of the boat?

To the sixth interrogatory he saith—She had a fire engine placed abaft the forward bulk-head, under the promenade deck, midships; it was in good condition. I don't recollect using it after October or November. I don't recollect using it after the boat was altered to burn coal. The engine was particularly under my charge.

Seventh interrogatory—State what you know relative to the fire, at the time of the loss of the Lexington?

To the seventh interrogatory he saith—I was sitting in the forward cabin, preparing to retire—suddenly my attention was attracted by a tramping on deck, which appeared to be directed from the forward part of the boat. I immediately went on deck to know the cause; I came up the companion way facing the larboard side of the boat, and looking aft, I saw the fire where the cotton was stowed, on the boiler deck. I immediately sprang upon the outer tier of cotton stowed alongside the boiler deck, and there I saw the fire in the cotton on the boiler deck—on the after end of those tiers of cotton which were stowed on the boiler deck. The cotton was stowed so as to come within twelve or eighteen inches of the steam chimney casing, and the after part of the tiers, nearest the steam chimney, were on fire; I, at that time, saw the cotton only on fire. The space of cotton on fire was not great, but it was in a blaze, extending as high as the deck. The cotton itself, in that place, was piled up to within twelve inches of the promenade deck. The fire was within two feet and a half of the boiler deck working down. I noticed particularly that neither the steam chimney casing, or the boiler cover were on fire. The boiler cover was covered with copper. I next proceeded to the fire engine and hauled it out on the forecastle deck, shipped in the breaks, screwed on the suction pipe and threw it overboard. In the mean time I sent a man for the hose. This was all done in a small space of time. The mate and crew assisted me in getting out the engine. The man sent for the hose did not bring them. He stated that he could not get them in consequence of the blaze cutting him off from the gangways. (Objected to by counsel for the plaintiff as hearsay.) We then went after the buckets, which hung abaft the forward bulk-head. Two dozen buckets hung there, and there was one dozen over the shaft midships. We commenced drawing water, over the side on the forward deck, and threw it on the fire. We

continued throwing on water for a few minutes not exceeding three, and then desisted—I did so for my own safety. I then proceeded to the promenade deck on the starboard side. As I climbed up the bulk-head, I saw Manchester, and the man from the wheel, assisted by passengers, clearing the life boat. I then went to the after part of the boat, and gave orders to have some of the cotton thrown overboard from the guard, and was assisted by the crew and passengers in getting it to the side of the boat. Captain Childs then gave orders not to throw the cotton overboard, and we accordingly desisted. The Captain in a loud and hasty manner, told the passengers to take to the boats. He then turned to the engineer, and walked as far forward as the shaft, and asked him if he could not stop the engine. The engineer said that he could not in consequence of the blaze cutting him off.

Examination adjourned, by consent of parties, to Thursday, April 28th, 1842, at 3 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Thursday, April 28th, 1842.—At the time and place of adjournment, personally appeared before me the within named David Crowley, to testify and the truth to say, on the part of the defendants, in the above mentioned matter; and the examination of the said David Crowley was continued as follows, viz:

Direct examination continued.

Answer to the seventh interrogatory continued—I went aft round the ladies' cabin, and the passengers began to collect there. I assisted the passengers in throwing overboard articles to support them. I threw over a plank for myself, and then got upon a cotton bale. I don't know how long the engine continued to run after the alarm of fire, precisely, but think it was from ten to twenty minutes; the engine did not stop suddenly, but gradually. I was within half a mile of the Lexington, when the engine stopped, and could see the beam of the engine very distinctly.

Eighth interrogatory—Was there any, and what part, of the boat on fire, when you first got to the cotton which was on fire?

To the eighth interrogatory he saith—There was no part of the boat on fire at that time.

Ninth interrogatory—What was the form of the steam chimney?

To the ninth interrogatory he saith—It was circular.

Tenth interrogatory—Was or was not all the aftermost tier of cotton on the boiler deck within twelve or eighteen inches of the steam chimney? State how this was.

To the tenth interrogatory he saith—No, sir. The aftermost tier of cotton went straight across the boiler deck, consequently the outer parts of the sides of this tier would be some three feet from the steam chimney. *Schedule* E, hereunto annexed, represents a ground plan of the cotton on the boiler deck and the steam chimney; *letter* "*A*," in the schedule represents the cotton placed on the boiler deck; and letter "*B*"

the steam chimney; the corners marked in the schedule "C" "C," were between three and four feet from the steam chimney.

Eleventh interrogatory—Do you or do you not know Mr. Frederick W. Hempstead, and do you or not recollect, that he went one trip in the Lexington as engineer, in place of Courtland Hempstead; and, if yea, about how long was this before she was lost?

To the eleventh interrogatory he saith—I do know Mr. Frederick W. Hempstead, and I do recollect that he made one trip in the Lexington as engineer in place of Courtland Hempstead; this was about a week before the Lexington was lost.

Twelfth interrogatory—Were you or not attached to the Lexington, or employed on board of her, when she was altered to burn coal in the fall or winter of 1839?

To the twelfth interrogatory he saith—I was employed on board of her at that time.

Thirteenth interrogatory—How many times was the Lexington on fire, after she was altered to burn coal, before she was finally lost, as you know?

To the thirteenth interrogatory he saith—Once, and only once, that I know, and I should have known it if she had been on fire oftener.

Fourteenth interrogatory—State when this was, and the particulars, as far as you know?

To the fourteenth interrogatory he saith—I think it was the trip before she was lost, or three days before she was lost; the after end of the boiler deck took fire. I do not know what occasioned it. A surface of six inches square was burnt through; I could put my two fists through the hole; one corner of a box of goods was also slightly burnt. The fire was discovered on the Lexington while she was coming round the battery.

Fifteenth interrogatory—Did you or did you not, before the Lexington was lost, hear that she had been on fire at any time than this that you have mentioned?

To the fifteenth interrogatory he saith—No, sir, I never did.

Sixteenth interrogatory—Did you or did you not, after the Lexington was altered to burn coal in 1839, know of any wood which was piled at the sides of the boiler being on fire; and, if yea, when?

To the sixteenth interrogatory he saith—I never knew any of that wood to be on fire?

Seventeenth interrogatory—Did you or did you not assist in passing out of the boiler room any of that wood which had been on fire; or was or was not any of that wood, which had been on fire, passed out under your direction?

To the seventeenth interrogatory he saith—I did not assist in passing it out, and none was passed out under my direction.

Eighteenth interrogatory—Do you or do you not know where Berg's ship yard was in 1840; and do you or do you not know that the Lexington, or any of the wood on board of her, was on fire, at any time, near that place; and, if yea, when?

To the eighteenth interrogatory he saith—I do know where Beig's ship yard was in 1840; neither the Lexington, or any of the wood on board of her, was ever on fire near that place, to my knowledge.

Nineteenth interrogatory—After the Lexington was altered to burn coal, where was the wood, intended to be used in the furnaces, carried or stowed?

To the nineteenth interrogatory he saith—Alongside the boiler, some portion of it, and the other portion of it on the coal, which was on the guard amidships, in the side house, on the starboard side?

Twentieth interrogatory—By what opening or passage did you get into the boiler room from the deck?

To the twentieth interrogatory he saith—By a scuttle.

Twenty-first interrogatory—Where was this situated?

To the twenty-first interrogatory he saith—Between the engine and steam chimney?

Twenty-second interrogatory—On which side of the steam chimney was the scuttle?

To the twenty-second interrogatory he saith—On the starboard side.

Twenty-third interrogatory—What was the shortest distance between this scuttle and any of the cotton, on the trip on which the Lexington was lost?

To the twenty-third interrogatory he saith—Between four and five feet.

Twenty-fourth interrogatory—Was there or was there not any thing between this scuttle and the part of the cotton which was on fire, when you first went to the fire?

To the twenty-fourth interrogatory he saith—There was not.

Cross examination.

First cross interrogatory—How wide were the gangways on each side of the Lexington?

To the first cross interrogatory he saith—About ten feet, more or less; probably not more than eight feet.

Second cross interrogatory—On her last trip, was cotton piled in each gangway; and, if yea, what space was left?

To the second cross interrogatory he saith—It was piled in both, and a space left of about three feet.

Third cross interrogatory—Was there a clear space of three feet on both sides, or only on one side of the boat?

To the third cross interrogatory he saith—On both sides.

Fourth cross interrogatory—Was there any cotton or other freight on the promenade deck?

To the fourth cross interrogatory he saith—There was not.

Fifth cross interrogatory—Did the steam chimney fit up snug to the promenade deck?

To the fifth cross interrogatory he saith—It did.

Sixth cross interrogatory—When the fire broke out on the last trip of the Lexington, what occasioned the trampling which attracted your attention to it?

To the sixth cross interrogatory he saith—I presume it was the trampling of the men in their hurry to get at the fire. When I got near the fire, I did not find any person there.

Seventh cross interrogatory—Did you make any effort to remove the cotton that was on fire, when you first saw it; and if not, why not?

To the seventh cross interrogatory he saith—I did not; I thought it was no use; there was too great a body, and I could not do it alone. I did move a few of the bales of cotton, in the outer tier, which was not on fire, in order to get sight at the inner tiers which were on fire. I did not go at that time to the after end of this pile of cotton, which was towards the steam chimney, but I climbed partly up, on the forward end of it, and crowded the bales apart, so as to look through at the fire. The height from the boiler deck to the promenade deck was about nine feet. The cotton filled it to within about a foot of the promenade deck.

Eighth cross interrogatory—How many bales of cotton were on fire, when you first saw the fire?

To the eighth cross interrogatory he saith—Not over four or five bales.

Ninth cross interrogatory—If the gangways had been clear for their whole width, how long would it have taken two men to throw five bales of cotton, that were on the boiler deck, overboard?

To the ninth cross interrogatory he saith—It would not take long. The distance to the gangway openings in the bulwarks, would be about seventy feet to the after one, and fifty to the forward one.

Tenth cross interrogatory—How did you commonly move cotton about the boat?

To the tenth cross interrogatory he saith—With the assistance of trucks, of which there were five or six about the deck, one man could readily wheel it when the bale was on, but two would be required to load it. Two men can work a bale of cotton along pretty fast without any truck, if they understand it, but for this purpose they must have good free width.

Eleventh cross interrogatory—When did you first see any part of the boat itself on fire, at this trip, and where was it?

To the eleventh cross interrogatory he saith—After the attempt to work the fire engine, which I have mentioned in my direct examination, I took a bucket of water and went back to where I had seen the fire. At that time it had burnt through the promenade deck, a space of eight or ten feet square. I did not notice that the steam chimney casing was on fire. At that time the fire did not seem to be much greater in the cotton than when I first saw it.

Twelfth cross interrogatory—How many buckets of water did you then bring and throw on?

To the twelfth cross interrogatory he saith—Not more than three or four. There were three or four others engaged in the throwing on water at that time. They brought it from the forward gangway opening in the bulwarks where they drew it. There was but one bucket rigged with a rope before, but they rigged heaving lines on two or three others; I can say I myself saw two.

Thirteenth cross interrogatory—Where were Captain Childs and the engineer when the former asked the latter to stop the engine; and when was this?

To the thirteenth cross interrogatory he saith—They were abaft the shaft on the starboard side. It was some six or eight minutes after the fire was first discovered; it was five to six minutes after my throwing on the water.

Fourteenth cross interrogatory—Where was the pilot, Manchester, up to this time?

To the fourteenth cross interrogatory he saith—I had seen him before this clearing the life boat, which was stationed on the promenade deck. Martin Johnson, the wheelman, was assisting him in getting out the life boat. There was nobody then at the wheel; the wheel rope had been carried away; this I know of my own knowledge. They were not burnt off, but the rope on the larboard side was parted in consequence of the great strain upon the rudder in the efforts made to turn the course of the boat.

Fifteenth cross interrogatory—Did Manchester, or any other person, go to the tiller and attempt to steer her there?

To the fifteenth cross interrogatory he saith—I attempted to get there, but could not remain, in consequence of the fire and smoke belonging there. My attempt was made about three minutes after I heard the Captain ask the engineer if he could stop the boat.

Adjourned, by consent of parties, to Wednesday, May 11th, 1842, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Wednesday, May 11th, 1842.—At the time and place of adjournment, personally appeared before me the within named David Crowley, to testify and the truth to say, on the part of the defendants in the above mentioned matter; and the examination of the said David Crowley was continued as follows, viz:

Cross examination continued.

Sixteenth cross interrogatory—What was the material of the steam chimney casing, and was it a fixture, or not?

To the sixteenth cross interrogatory he saith—It was of yellow pine, I think; I think so, because it is usually made of yellow pine. It was moveable. I saw it up on the night that the Lexington was lost. It was always kept up when the boat was running.

Seventeenth cross interrogatory—What was the object of the steam chimney casing?

To the seventeenth cross interrogatory he saith—I know no other object excepting that of ornament.

Eighteenth cross interrogatory—Were you familiar with the boiler room of the Lexington?

To the eighteenth cross interrogatory he saith—Somewhat familiar;

I was in the habit of being there once every day, and often a dozen times a day.

Nineteenth cross interrogatory—What was there over the boiler?

To the nineteenth cross interrogatory he saith—The boiler deck, resting on the beams of the boat; the wood did not come in contact with the boiler.

Twentieth cross interrogatory—What space was there round the steam chimney on the boiler deck?

To the twentieth cross interrogatory he saith—Some six or eight inches.

Twenty-first cross interrogatory—What space was there round it, where it passed through the promenade deck?

To the twenty-first cross interrogatory he saith—Not over three inches.

Twenty-second cross interrogatory—If you should pour water round the steam chimney, on the promenade deck, where would it go to?

To the twenty-second cross interrogatory he saith—To the sides and front of the boiler.

Twenty-third cross interrogatory—What space was there at the sides of the boiler?

To the twenty-third cross interrogatory he saith—From three to four feet.

Twenty-fourth cross interrogatory—Was that space clear or filled on the last trip of the Lexington?

To the twenty-fourth cross interrogatory he saith—It was filled with wood.

Twenty-fifth cross interrogatory—What space was there in front of the boiler?

To the twenty-fifth cross interrogatory—Eight feet between the engine and the front of the boiler. This space was more than half covered by the main deck, and the remainder was grated, and there was a scuttle on one side where the men went up and down.

Twenty-sixth cross interrogatory—How thick was that deck?

To the twenty-sixth cross interrogatory he saith—From two and a half to three inches. It was made of pine plank.

Twenty-seventh cross interrogatory—In what part of the boat did the fire occur which you have mentioned in your direct examination?

To the twenty-seventh cross interrogatory he saith—What we term amidships; it was in the main deck, at the larboard corner of the boiler deck, which was nearest the steam chimney. The boiler deck was not burnt at all. The main deck was burned through—a space sufficiently large to put my two fists through. It was not charred around it but for a very short distance. The combings were not burnt; it was not close against the combings. I did not know of this fire until after it was extinguished. The first intimation I had of it, was seeing a box of goods partly burnt.

Twenty-eighth cross interrogatory—Did you ever see the chimney of the Lexington red hot, and how high up?

To the twenty-eighth cross interrogatory he saith—I have seen it red hot, and from eight to twelve feet high above the promenade deck.

Twenty-ninth cross interrogatory—On the last trip of the Lexington, did she take all the freight that was offered on that day, or was any left?

To the twenty-ninth cross interrogatory he saith—She did not take all the freight that was offered, but left a great deal of cotton on the wharf.

Thirtieth cross interrogatory—Why did she not take the rest?

To the thirtieth cross interrogatory he saith—I don't know.

Direct examination resumed.

First direct interrogatory—Was the space between the cotton and the steam chimney, on the last trip of the Lexington, filled with any thing; and, if so, what was it? Or was it used for any purpose; and if so, what was it?

To the first direct interrogatory he saith—It was a vacant space; it was not used for any purpose.

Second direct interrogatory—During the cold weather, were or were not the deck passengers in the habit of crowding in between the steam chimney and the freight on the boiler deck?

(Objected to by counsel for plaintiff, excepting so far as the question refers to the last trip of the Lexington.)

To the second direct interrogatory he saith—They were.

Third direct interrogatory—Did you or did you not notice any passengers there on the afternoon or evening of the 13th of January, 1840?

To the third direct interrogatory he saith—I did not.

Fourth direct interrogatory—Might or might not any have been there without your knowledge, on the afternoon or evening of the 13th of January, 1840?

To the fourth direct interrogatory he saith—They might have been there without my noticing it.

Fifth direct interrogatory—Were or were not deck passengers, or other passengers, frequently found by you, sitting between the freight and steam chimney, on the boiler deck, with lighted pipes and cigars.

(Objected to by counsel for plaintiff, excepting as far as the question refers to the last trip of the Lexington.)

To the fifth direct interrogatory he saith—They were.

Sixth direct interrogatory—When you found any one smoking in that place, what did you do?

To the sixth direct interrogatory he saith—I always started them out.

(*Cross examination resumed.*)

First cross interrogatory—Did you ever see any of the cotton smoking near the steam chimney?

To the first cross interrogatory he saith—Never previous to the last trip of the Lexington.

DAVID CROWLEY.

Sworn before me, this eleventh day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Adjourned, by consent of parties, to Thursday, May twelfth, 1842, at 4 o'clock, P. M.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Roswell E. Lockwood.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this twelfth day of May, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared Roswell E. Lockwood, to testify and the truth to say, on the part and behalf of the defendants, in the above mentioned matter.

And the said Roswell E. Lockwood being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Roswell E. Lockwood, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Are you in the employment of the Steam Navigation Company, in what capacity, and how long have you been so employed?

To the first interrogatory he saith—I am in the employment of the Steam Navigation Company. I am secretary, and have been since the organization of that company in August, 1839?

Second interrogatory—Do you know whether or not it was the practice of the clerks of the defendants' steamboats to give bills of lading for goods shipped on board of them?

(Objected to by counsel for the plaintiffs.)

To the second interrogatory he saith—The clerks have orders in every instance to give bills of lading for merchandise.

Third interrogatory—State whether the schedule marked "F," now shown you, and which is hereunto annexed, is the form of the bills of lading used by the defendants since their organization?

(Counsel for the plaintiff objects to the testimony and the introduction of the schedule.)

To the third interrogatory he saith—It is the form of bills of lading used by the defendants.

Fourth interrogatory—From whom did the clerks, at the different boats, get the blank bills of lading for use?

Counsel for the plaintiff objects to all testimony relative to the custom of the defendants.

To the fourth interrogatory he saith—From me.

Fifth interrogatory—In what form were they delivered to the clerks?

To the fifth interrogatory he saith—In books bound like check books, with a margin on the side, for the purpose of entering in the margin the marks and numbers of the goods for which the bill of lading was given.

Sixth interrogatory—What are these books called, and in whose custody were they?

To the sixth interrogatory he saith—They are called bills of lading books, and were in the custody of the captains and clerks of the respective boats until the books were used up, when they are returned to the office, and are placed in my charge.

Seventh interrogatory—Was there any bill of lading book in use, on board the Lexington, on the 13th of January, 1840, and what has become of it?

To the seventh interrogatory he saith—There was; I have every reason to suppose it was destroyed in the boat; I have never seen or heard of it since.

Eighth interrogatory—Were or were not the bills of lading, which were used on board the Lexington on the 13th of January, 1840, the same as the schedule hereunto annexed, marked "F?"

To the eighth interrogatory he saith—They were the same.

Ninth interrogatory—Were you or not on board the Lexington during the 13th of January, 1840; and, if so, at what time?

To the ninth interrogatory he saith—I was on board between the hours of half-past twelve, and half-past one, P. M.

Tenth interrogatory—Do you know whether or not bills of lading were delivered for goods shipped on board the Lexington on that trip; and, if so, how do you know it?

(Objected to by counsel for plaintiff.)

To the tenth interrogatory he saith—I do. I was in the captain's office a greater part of the time. I was on board, and saw the captain's clerk deliver bills of lading to carmen, at the office window. I did not know any of the carmen.

Eleventh interrogatory—Do you know whether or not those bills of lading were taken from the Lexington's bill of lading books?

To the eleventh interrogatory he saith—I saw the clerk so take them.

Twelfth interrogatory—Who was the clerk on board the Lexington who was delivering the bills of lading at that time?

To the twelfth interrogatory he saith—Jesse Comstock.

Thirteenth interrogatory—Do you know whether or not Jesse Comstock was lost in the Lexington?

To the thirteenth interrogatory he saith—He was lost. He has never been heard of since.

Cross examination.

First cross interrogatory—Was the Lexington insured, and for what amount, at the time of her loss?

To the first cross interrogatory he saith—She was insured for twenty thousand dollars.

R. E. LOCKWOOD.

Sworn before me, this twelfth day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

WEDNESDAY, JUNE 8th, 1842.

Further examination of Roswell E. Lockwood.

On this eighth day of June, 1842, before me, Joseph Bridgham, commissioner as aforesaid, personally appeared the above named Roswell E. Lockwood, to testify and the truth to say, on the part and behalf of the defendants, in the above mentioned matter; and the said Roswell E. Lockwood having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Roswell E. Lockwood, and he did thereupon further depose, testify and say, as follows, viz:

First interrogatory—Were you formerly, and for how long, in the employ of the Boston and New York Transportation Company?

To the first interrogatory he saith—I was in the employ of that company from November, 1836, to August 1st, 1839.

Second interrogatory—Please look at the paper now produced to you, a copy of which is hereunto annexed, marked schedule *H*, and say who is the subscribing witness?

(The introduction of this paper objected to by counsel for plaintiff.)

To the second interrogatory he saith—Myself.

Third interrogatory—Did you see the parties to that paper who appeared to have executed it, execute the same, and did you subscribe your name as a witness to such instrument?

To the third interrogatory he saith—I did see the parties subscribe it, and I myself subscribed it as a witness.

Fourth interrogatory—Was the Boston and New York Transportation Company, an incorporated or unincorporated company?

To the fourth interrogatory he saith—Unincorporated.

Fifth interrogatory—When did it cease business under that name?

To the fifth interrogatory he saith—August 1st, 1839.

Sixth interrogatory—What became of the property and effects of that association, and were they or not merged in the New Jersey Steam Navigation Company?

To the sixth interrogatory he saith—They were so merged.

Seventh interrogatory—Are the persons interested in the New Jersey Steam Navigation Company the same persons, generally, who were interested in the Boston and New York Transportation Company?

(Objected to by counsel for the plaintiff.)

To the seventh interrogatory he saith—They are.

Eighth interrogatory—Does the New Jersey Steam Navigation Company conduct and carry on the same business as was conducted and carried on by the Boston and New York Transportation Company?

(Objected to by counsel for the plaintiff as a leading question.)

To the eighth interrogatory he saith—They do.

Ninth interrogatory—Look at the paper now shown to you, a copy of which is hereunto annexed, marked schedule "I," and say who is the subscribing witness?

To the ninth interrogatory he saith—Myself.

Tenth interrogatory—Did you see the persons whose names are subscribed to that instrument execute the same, and is the seal affixed thereto the corporate seal of the New Jersey Steam Navigation Company?

(Objected to by counsel for the plaintiff.)

To the tenth interrogatory he saith—I was present and saw it executed, and the seal is that of the New Jersey Steam Navigation Company.

Eleventh interrogatory—What is the paper hereunto annexed, marked schedule "J?"

To the eleventh interrogatory he saith—It is a copy of a letter from William F. Harnden, the original of which I hold in my hand, to Charles Overing Handy, President of the New Jersey Steam Navigation Company.

(Counsel for the plaintiff objects to the introduction of the above papers, and of any papers to which the plaintiff is not privy.)

Twelfth interrogatory—Was the original letter, of which schedule "J," hereunto annexed is a copy, received by Mr. Handy, and at or about what time?

To the twelfth interrogatory he saith—It was received at or about the 1st of December, 1839.

Thirteenth interrogatory—What is the paper hereunto annexed, marked schedule "K?"

To the thirteenth interrogatory he saith—It is the copy of a letter from Charles Overing Handy, President of the New Jersey Steam Navigation Company, to William F. Harnden, Boston, dated New York, December 9th, 1839.

Fourteenth interrogatory—Was the original of that letter transmitted to Mr. Harnden; and if so, at or about what time?

To the fourteenth interrogatory he saith—It was so transmitted on the day of its date.

Fifteenth interrogatory—What is the paper now shown you and hereunto annexed, marked schedule "L"?

To the fifteenth interrogatory he saith—It is the copy of a letter, the original of which I now hold in my hand, dated Boston, December 16th, 1839, from William F. Harnden to Charles Overing Handy, President of the New Jersey Steam Navigation Company.

Sixteenth interrogatory—At or about what time was the original of that letter received by Mr. Handy?

To the sixteenth interrogatory he saith—At or about December 17th, 1839.

Seventeenth interrogatory—What is the paper now shown you, and hereunto annexed, marked schedule "M?"

To the seventeenth interrogatory he saith—A copy of a letter, dated New York, December 31st, 1839, from Charles Overing Handy, President, to William F. Harnden, Boston.

Eighteenth interrogatory—What became of the original of the letter of which that purports to be a copy?

To the eighteenth interrogatory he saith—It was sent to Mr. Harnden on the day of its date.

Nineteenth interrogatory—Look at the paper now shown you, a copy of which is hereunto annexed, marked schedule "N," and say who the subscribing witness is?

To the nineteenth interrogatory he saith—Myself.

Twentieth interrogatory—By whom is it executed, and whose seal is impressed upon it?

To the twentieth interrogatory he saith—It is executed by William F. Harnden and Charles Overing Handy, President of the New Jersey Steam Navigation Company, and the seal is that of the said company.

Twenty-first interrogatory—Was it or not executed in your presence?

To the twenty-first interrogatory he saith—It was.

Twenty-second interrogatory—What occasioned the delay in the execution of the last mentioned instrument?

To the twenty-second interrogatory he saith—It must have been in consequence of Mr. Harnden's not coming to New York on account of bad weather. I know that such was the case.

Twenty-third interrogatory—Did Mr. Harnden continue his business with the New Jersey Steam Navigation Company from December 31st, 1839, to the time of the execution of the last mentioned instrument?

To the twenty-third interrogatory he saith—He did as he had before. There was no alteration at all; on the same terms precisely.

Twenty-fourth interrogatory—When was the paper, of which schedule "N" is a copy, executed?

To the twenty-fourth interrogatory he saith—On the 24th of February, 1840.

Twenty-fifth interrogatory—Have you seen the originals of all the papers, copies of which are annexed to your depositions, and are such copies correct and true, or otherwise?

To the twenty-fifth interrogatory he saith—I have seen the originals, and they are correct and true. I copied them all myself.

Twenty-sixth interrogatory—When were the papers, copies of which are hereunto annexed, marked schedules "H" and "I," executed?

To the twenty-sixth interrogatory he saith—Schedule "H" was executed on or about the 5th day of July, 1839, and schedule "I," on or about the 1st day of August, 1839.

Twenty-seventh interrogatory—Do you know the handwriting of William F. Harnden, and are his signatures to the original letters now

produced to you, copies of which are hereunto annexed, marked schedule "J" and "L," his genuine signatures?

To the twenty-seventh interrogatory he saith—I am acquainted with the signature of William F. Harnden, and they are his true signatures.

R. E. LOCKWOOD.

Sworn before me, this eighth day of June, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Caleb A. Townsend.

UNITED STATES OF AMERICA,
Southern district of New York.
CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared Caleb A. Townsend, to testify and the truth to say, on the part and behalf of the defendants, in the above mentioned matter.

And the said Caleb A. Townsend being about the age of sixty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Caleb A. Townsend, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Are you in the employ of the New Jersey Steam Navigation Company; and if so, how long have you been in their employment, and in what capacity?

To the first interrogatory he saith—I am in the employment of the New Jersey Steam Navigation Company, and have been in their employ ever since the formation of the company, as one of their agents.

Second interrogatory—State whether or not the company have given any notices to shippers or consignees respecting their liability as common carriers; and, if yea, what were they, and how were they given?

To the second interrogatory he saith—The company has, I think, given various notices, but of my own knowledge I can testify only to one, which is that now produced and hereunto annexed, marked schedule "G." These notices were given, by being placed on board the several boats, and on the wharves in the most conspicuous situations in

which they could be placed, and at the various depots or stores. One depot was on the dock from whence the boat started, and the other at No. 22, Broadway.

Third interrogatory—For what purpose was the depot on the wharf used?

To the third interrogatory he saith—For the purpose of receiving goods from the boats, and goods taken to the boats. In case of stormy weather, or when the goods came too late for the boats, they were deposited in the depot.

Fourth interrogatory—In what parts of the boats were these notices placed?

[Objected to by counsel for the plaintiff, excepting as regards the Lexington.]

To the fourth interrogatory he saith—They were in the most conspicuous situations in the after part of the boat.

Fifth interrogatory—State whether or not these notices were posted on all the boats of the company, and how you know it?

To the fifth interrogatory he saith—They were placed on all the boats in operation at the time. They were placed there under my direction. My vocation led me to be on board the boats generally every day, and I have observed them there. I can't say that I noticed them every time, but I think they were there.

Sixth interrogatory—State whether or not these notices were put up on board the Lexington during the time she was running in December, 1839, and January, 1840?

To the sixth interrogatory he saith—I have no doubt they were; she was one of the boats then in operation, and the notices were ordered to be put up.

Seventh interrogatory—Whose business was it to see that these notices were put up at that time?

To the seventh interrogatory he saith—It was my duty to see it.

Eighth interrogatory—When were these notices first issued?

To the eighth interrogatory he saith—The one to which I have referred throughout, marked schedule "G," was issued the latter part of the year 1839.

Ninth interrogatory—State whether or not these notices were continued to be posted up until after the loss of the Lexington?

To the ninth interrogatory he saith—I have no doubt but that they were, for some time after that, but I cannot state distinctly.

Cross examination.

First cross interrogatory—Are these notices kept posted up now, and if not, why not?

To the first cross interrogatory he saith—I don't know of any that are now posted up; they have been until recently. We have not posted them up lately; I have received no orders to do so. Something to the same purport is contained in the newspaper advertisement.

Second cross interrogatory—Have they not been discontinued because they were thought to be of no effect?

To the second cross interrogatory he saith—I don't know; I have never heard any such reason assigned.

CALEB A. TOWNSEND.

Sworn before me, this thirteenth day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Adjourned, by consent of parties, to May 18th, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Stephen Manchester.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared Stephen Manchester, to testify and the truth to say, on the part and behalf of the defendants, in the above mentioned matter.

And the said Stephen Manchester being about the age of fifty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Stephen Manchester, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Are you now in the employ of the defendants *and* this suit; how long have you been so, and in what capacity?

To the first interrogatory he saith—I am in the employ of the defendants, and have been so since March, 1839, as pilot; I was pilot of the Lexington, and have, since that time, been pilot of the Mohegan, Narragansett, and a small portion of the time on board the Massachusetts.

Second interrogatory—Were you on board the Lexington at the time she was lost?

To the second interrogatory he saith—I was.

Third interrogatory—State where you were at the time you first heard or knew that the boat was on fire, and the particulars of her loss, as far as you yourself know?

To the third interrogatory he saith—She was near Huntington light-house, some four miles east of the light, and between forty and fifty miles from New York. It was about half-past seven o'clock in the evening. I know the hour, because we always take down, on a slate, the hour that we pass every light-house. This was the business of the pilot. I was in the wheel-house, when I heard that the boat was on fire. Some one came to the wheel-house and told the wheelman and myself that the boat was on fire. I stept out of the wheel-house and went up to the smoke pipe. I saw the fire blazing up through the promenade deck, around the smoke pipe. The promenade deck was on fire, and was blazing up two or three feet. I looked down a scuttle which went through the promenade deck, and which was about three or four feet on the larboard side, a little abaft of the smoke pipe; it was not exactly abreast of it or abaft of it, but quartering. The scuttle led down between the after part of the boiler and the forward part of the engine. In looking through the scuttle I saw blaze and smoke, as if she was on fire there. I can't say whether or not the main deck was on fire at that time. I next returned to the wheel-house, and hove the wheel hard over a port, which would sheer the boat to the southward, for the purpose of running the boat ashore to the nearest land, which was Long Island shore. Just as I got the wheel hove a port, Captain Childs came in and put his hand on the spoke of the wheel. As he took hold of the wheel, the starboard wheel rope gave way. Within an instant from that time, the smoke broke into the wheel-house, so that we were obliged to leave it. Captain Childs went out of the wheel-house and went aft, and I did not see any thing of him after that. I then stept out and called to some of our people on the forecastle to get out the fire engine. They got it out. I then told them to get out the hose and the fire buckets. The fire then spread so between decks that they could not get at the hose or buckets. I then went to the life boat, and found some men there, casting off the lashings with which she was fastened to the promenade deck. I caught hold of the lashings, and told them not to cast them off till we had attached a hauser to the boat. I sang out to some one on the forecastle to pass up a hauser to attach to the boat, which was done. I then told them to take the hauser attached to the boat, and to fasten it to the forward part of the steamer. The fire then was burning up through the deck and around the life boat, and I cut the lashings, and told the men to throw the boat overboard; I then jumped down on to the forward deck, caught hold of the hauser, and found that it was not made fast to the steamboat as directed. I found the boat was getting away from us, and I sang out to the people about there to hang on to the hauser, or we should lose her. They let go of the hauser, one after another, until they let the boat go. The promenade deck was at that time all of a blaze to the bulk-head. It was about fifteen or twenty minutes after I first heard of the fire, that the life boat was let go. The life boat was somewhat burnt before she was thrown over. The next thing I, with the others on the forecastle, did, was to empty the baggage cars, and attach lines to them, and throw

them overboard for any one to save himself that could. Some of those on the forecastle drew water with what buckets we had, and threw it on the fire. I then took the flag staff and another spar that we had knocked off the bulwarks, and fastened them to those two spars to make a raft to get on to. I threw the raft overboard, and several persons, some two or three, got on to it; but it was not buoyant enough to hold them up. That was all we could do, excepting to throw water, which we did as long as we could. The boat was then nearly burnt to the water's edge, and the forward deck was burnt and had fallen in. We then got cornered up so that we had no chance to throw water, and were obliged to leave the boat to burn. Those left on the forecastle, some eight or ten in number, then asked me what they could do to save themselves. I then told them that I saw no chance; that we had done all that we could do. We then began to get overboard; some hung on to the crates at the forward part of the boat, and some got on to the guard. I got down on to the raft I have before mentioned. I found it sinking under me, and I lifted myself up again by a piece of rope which I had, and which I whipt over a spike. Then I jumped from the raft on to the piece of guard; and from this guard I got on to a bale of cotton. I found a man by the name of McKinney on the bale. After I had got on, a man standing on this piece of guard asked if there was room on the bale of cotton for another man. I made him no answer. He jumped to get on to it, and in doing so knocked off McKinney. I hauled McKinney on to the bale again, and the man returned to the guard. I found the bale was lashed to this piece of guard, and I took my knife and cut away the lashings; I took up a piece of board which was floating by, and shoved the bale clear of the guard, and let it drift down the Sound before the wind. McKinney froze to death about day-light the next morning, and fell off the bale. Between eleven and twelve o'clock the next day, I was picked up by the sloop "Merchant," Captain Meeker. When I first heard that the boat was on fire, I had been in the wheel-house, after taking my tea, for about twenty-five or thirty minutes.

Fourth interrogatory—What time did the Lexington leave New York on the 13th of January, 1840?

To the fourth interrogatory he saith—Our hour of starting was four o'clock, P. M., but I think on that day it was about half-past four before we got away.

Fifth interrogatory—Can you say whether, when you looked down the scuttle as you have stated, the blaze and smoke which you saw, proceeded from the main deck, or the freight, or what it proceeded from?

To the fifth interrogatory he saith—I can't say whether from the freight or the deck?

Sixth interrogatory—What was the space of the boat immediately under the scuttle used for?

To the sixth interrogatory he saith—It was for the purpose of working the engine. No freight was carried there; nearly under this there was a scuttle in the main deck, leading down to the fire room.

Seventh interrogatory—Might or might not the blaze and smoke have proceeded from the freight, and have been carried aft by the passage of the boat through the air?

Objected to by counsel for plaintiff, as matter of opinion.

To the seventh interrogatory he saith—It might have been so.

Eighth interrogatory—Had the Lexington any other means of moving her rudder besides the wheel in the pilot house; and if so, what?

To the eighth interrogatory he saith—She had a tiller aft, with tiller ropes running through blocks attached to it.

Ninth interrogatory—How was this tiller attached to the rudder?

To the ninth interrogatory he saith—It went into a mortice in the rudder-head; the rudder-head came up through the promenade deck.

Tenth interrogatory—How were the tiller ropes, attached to this tiller, rove?

To the tenth interrogatory he saith—There was a block fastened to the promenade deck on each side; then there was a strap round the end of the tiller, with an eye in the strap on each side the tiller, to which the block that the tiller rope rove through was hooked; this rope was rove through these two blocks, and when the tiller was required, it was hooked into the strap round the end of the tiller.

Eleventh interrogatory—Where were these blocks and ropes usually carried?

To the eleventh interrogatory he saith—They were carried round and under the seat near the head of the tiller; all we had to do was to hook them in.

Twelfth interrogatory—Why were they not always hooked on to the tiller?

To the twelfth interrogatory he saith—Because when you hove the whee lover, you would be obliged to overhaul the rope through the blocks. It interfered with the management of the boat by the wheel.

Thirteenth interrogatory—When you hove the wheel aport, which way did the rudder blade go?

To the thirteenth interrogatory he saith—It went starboard.

Fourteenth interrogatory—Were you or not on board the Lexington on all the trips she made from the time she was altered to burn coal until she was lost.

To the fourteenth interrogatory he saith—I was.

Fifteenth interrogatory—How many times was the Lexington on fire to your knowledge, after she was altered to burn coal, and previous to the night on which she was lost?

To the fifteenth interrogatory he saith—I never knew her to be on fire at all until the night she was burnt.

Sixteenth interrogatory—Have you ever heard of her being on fire previous to the night of her loss; if yea, what did you hear?

To the sixteenth interrogatory he saith—Smith told me that a box of goods took fire on the trip previous to her loss, I think. I am not certain whether it was the trip before, but it was a short period before.

Seventeenth interrogatory—While the boat, on any trip, was running

from the dock at New York to Hellgate, where would you be if you were on board, and what would you be doing?

To the seventeenth interrogatory he saith—I should be in the pilot-house steering the boat, with the assistance of the wheelsman, until we had got through the gate.

Eighteenth interrogatory—How long were you pilot of the Lexington?

To the eighteenth interrogatory he saith—I think about four years; I don't exactly recollect; it was certainly over three.

Nineteenth interrogatory—Can you recollect distinctly whether or not you always steered the boat from the dock at New York until after you got through the gate?

To the nineteenth interrogatory he saith—I always have. I don't recollect that I ever left the wheel of any boat after she left the dock until she had got through the gate in going and in returning. I always took the wheel previous to her coming to the gate, and kept it until she got to the wharf.

Twentieth interrogatory—Why did you always take the wheel on these occasions?

To the twentieth interrogatory he saith—On account of there being a strong current, and bad navigation, and a great many vessels passing and repassing.

Twenty-first interrogatory—When you were at the wheel of the Lexington steering the boat, could you tell whether or not the engine had stopt, and how soon after the engine stopt would you know it, and how would you know it?

To the twenty-first interrogatory he saith—I could tell the moment she stopt, for the Lexington lost her head-way very quick.

Twenty-second interrogatory—Are you acquainted with Frederick W. Hempstead, brother of the late Courtland Hempstead?

To the [twenty] second interrogatory he saith—I am not particularly acquainted with him. I have seen him. He went one trip in the Lexington in the place of his brother; that is about all I know of him.

Twenty-third interrogatory—How long before the Lexington was lost, did Frederick W. Hempstead go as engineer?

To the twenty-third interrogatory he saith—I don't recollect; it might have been some ten or twelve days, and it might not have been so long.

Twenty-fourth interrogatory—Have you any knowledge or recollection as to whether or not the Lexington's engine was stopt between the Battery and Hellgate, on the trip on which Frederick W. Hempstead went as engineer?

To the twenty-fourth interrogatory he saith—I have no recollection of any thing of the kind.

Twenty-fifth interrogatory—Do you know where Berg's ship yard was in December, 1839, and January, 1840?

To the twenty-fifth interrogatory he saith—I don't exactly know; it was, I believe, somewhere between the point of the Hook and the Novelty works; it might have been south of the Hook.

Twenty-sixth interrogatory—Have you any knowledge or recollection as to whether or not the Lexington, or the wood on board of her, took fire on the trip on which Frederick W. Hempstead went as engineer?

To the twenty-sixth interrogatory he saith—I have no knowledge of any thing of the kind.

Twenty-seventh interrogatory—Did you ever hear that the Lexington, or any of her wood, took fire on that trip?

To the twenty-seventh interrogatory he saith—I heard some one say that Mr. Hempstead had stated that the wood had been on fire on that trip—that is all I ever heard.

Twenty-eighth interrogatory—When you were driven out of the pilot house by the smoke, why did you not go aft and steer the boat by the tiller?

To the twenty-eighth interrogatory he saith—I did not think a man could live there to steer the boat any time on account of the fire and smoke.

Twenty-ninth interrogatory—Do you know who it was that first told you that the boat was on fire?

To the twenty-ninth interrogatory he saith—I do not.

Cross examination.

First cross interrogatory—How far was the Lexington from shore when she took fire?

To the first cross interrogatory he saith—I should judge between four and five miles.

Second cross interrogatory—How long would it have taken her to get ashore at the rate she was going?

To the second cross interrogatory he saith—I should think twenty or twenty-five minutes. It would have taken from a minute to a minute and a half to have turned her head to the shore, if the rope had not parted. I don't know what occasioned the rope to part, but I always supposed it was burnt off.

Third cross interrogatory—What was the length of the rope from the wheel to the rods on each side?

To the third cross interrogatory he saith—About twenty feet, I should think.

Fourth cross interrogatory—Did you leave the pilot-house immediately upon hearing of the fire?

To the fourth cross interrogatory he saith—I stept directly out, and saw the fire burning through the promenade deck, around the smoke pipe.

Fifth cross interrogatory—Did you go to the main deck after the fire commenced?

To the fifth cross interrogatory he saith—I went on to the forecastle deck, but not inside of the bulk-head doors. I did not go, because it was all on fire between decks. This was about fifteen minutes after I heard that the boat was on fire.

Sixth cross interrogatory—Were there men at work at that time throwing on water, inside the bulk-head doors, on the main deck?

To the sixth cross interrogatory he saith—There were none, to my knowledge. They could not have staid there on account of the smoke and fire.

Seventh cross interrogatory—Did you assist in drawing water to throw on to the fire?

To the seventh cross interrogatory he saith—We did draw water to keep back the fire, which was spreading on the forecastle deck.

Eighth cross interrogatory—Why was the boat detained until half-past four o'clock, P. M., on the 13th of January, 1840?

To the eighth cross interrogatory he saith—I think there was some one at work, doing some small job on board of her.

Ninth cross interrogatory—Did or did not the Lexington carry a large amount of freight on the trip on which she was lost?

To the ninth cross interrogatory he saith—She had a pretty full freight, but I have seen her about as full with domestic goods, as she was with cotton at that time. Her freight, on this occasion, was mostly cotton. I heard the mate say that there were about 150 bales.

Tenth cross interrogatory—How came the mate to mention this to you?

To the tenth cross interrogatory he saith—I don't recollect; I might have asked him. We generally took tea together, and I think we did that night. I don't know whether this conversation about the cotton took place while we were at tea or not, or when it did take place.

Eleventh cross interrogatory—How was the cotton stowed?

To the eleventh cross interrogatory he saith—I think forward of the engine the cotton was stowed amidships on end, leaving a gangway on each side, of about three feet in width, between the cotton and the joiner work. Abreast of the engine it was stowed flat out against the joiner work—in some places two, and in some three bales high. This left a gangway of about four feet on each side amidships. I don't know exactly how near the cotton came to the steam chimney, but from thence it extended to within a short distance of the forward bulk-head.

Twelfth cross interrogatory—What did you use to draw water with?

To the twelfth cross interrogatory he saith—We used two draw buckets and some specie boxes. The specie boxes we got out of Harnden's cars, emptied the specie on deck, and drew water with them.

Thirteenth cross interrogatory—How many of those boxes were used?

(Objected to by counsel for the defendants.)

To the thirteenth cross interrogatory he saith—Some three or four, I should think. We drew water with the buckets and used the boxes to pass it. Several passengers, deck hands and waiters assisted me.

Fourteenth cross interrogatory—Who superintended these exertions to stop the fire?

To the fourteenth cross interrogatory he saith—I don't know that any one in particular superintended. Every man did all that he could.

Fifteenth cross interrogatory—What was the material, and what was the object of the steam chimney casing?

To the fifteenth cross interrogatory he saith—It was of wood. I don't know of any object excepting that of ornament.

Sixteenth cross interrogatory—Did you ever see the smoke pipe of the Lexington red hot; and if yea, how high up?

To the sixteenth cross interrogatory he saith—I have seen it red hot some six or eight feet above the promenade deck. This was often the case. I don't know that I ever saw it so when she burnt wood.

Seventeenth cross interrogatory—Did you see it red hot on her last passage before the fire broke out?

To the seventeenth cross interrogatory he saith—I did. There was nothing unusual in its appearance.

Eighteenth cross interrogatory—What was the appearance of the flame when you first saw it?

To the eighteenth cross interrogatory he saith—It was a thin sheet of flame around the smoke pipe, and seemed to originate from wood.

Direct examination resumed.

First direct interrogatory—Did you notice whether or not the flanges of the smoke pipe were red hot on the last passage of the Lexington?

To the first direct interrogatory he saith—I think they were not.

Second direct interrogatory—Of what kind of iron was the smoke pipe made?

To the second direct interrogatory he saith—It was made of thick sheet iron—thicker than sheet iron usually is.

Third direct interrogatory—State whether or not the Lexington was overloaded on the 13th of January, 1840; and if so, how did she show it?

Objected to by counsel for plaintiff.

To the third direct interrogatory he saith—I should say not, as respects weight.

Fourth direct interrogatory—Did she roll more than usual, or more than she would do from the effect of the sea?

To the fourth direct interrogatory he saith—I think she did not; she performed as well as usual, as far as she went.

Fifth direct interrogatory—Who were saved from the Lexington on the 13th of January, 1840?

To the fifth direct interrogatory he saith—Captain Hilliard, Captain Manchester, the pilot; David Crowley, the second mate, and Charles Smith, the fireman.

Sixth direct interrogatory—What do you mean by saying the Lexington was not overloaded as to weight?

To the sixth direct interrogatory he saith—She had no more than she could carry comfortably in any kind of weather.

STEPHEN MANCHESTER.

Sworn before me, this eighteenth day of May, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of Thomas C. Gladding.

UNITED STATES OF AMERICA,
Southern district of New York.
CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this seventeenth day of October, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States within and for said Rhode Island district, personally appeared Thomas C. Gladding, to testify and the truth to say, on the part and behalf of the defendants, in the above mentioned matter.

And the said Thomas C. Gladding being about the age of twenty-five years and upwards, and having been by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said Thomas C. Gladding, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Are you in the employ of the New Jersey Steam Navigation Company; and if so, how long have you been in their employment, and in what capacity?

To the first interrogatory he saith—I am in their employment, and have been ever since the formation of the company. I have been clerk in all their different boats.

Second interrogatory—In what boat were you acting as clerk on the 11th and 25th of September, 1839?

To the second interrogatory he saith—The Lexington.

Third interrogatory—In what boat were you acting as clerk on the 10th of January, 1840?

To the third interrogatory he saith—In the Providence.

Fourth interrogatory—Who was clerk of the Massachusetts on the 25th of October and the 13th of November, 1839?

To the fourth interrogatory he saith—Jesse Comstock.

Fifth interrogatory—What has become of said Comstock.

To the fifth interrogatory he saith—He was lost in the Lexington.

Sixth interrogatory—Who was the steward of the Lexington on the 11th of September, 1839?

To the sixth interrogatory he saith—His name was Newman. I think his first name was Richard. He was lost on board the Lexington.

Seventh interrogatory—Look at schedule "F," and see if that is the blank form of bills of lading used on board the boats of the company in 1839 and 1840?

To the seventh interrogatory he saith—I think it is.

Eighth interrogatory—Was there, or was there not, a bill of lading given to Fearings and Hall, of ten bales of cotton consigned to John H. Clarke, by the Providence, on the 10th of January, 1840? and if yea, state how you know it was so.

To the eighth interrogatory he saith—There was such a bill of lading given to Fearings and Hall, in my own handwriting. I know it by reference to the margin of the bill of lading book, from which the bill of lading was cut out. That bill of lading book is now before me, and the marginal writing, *is* my own hand, is as follows: "Fearing and Hall, 10 bales cotton, John H. Clarke, Providence, Jan'y 10, 1840."

Ninth interrogatory—Was there, or was there not, a bill of lading given to S. and J. Slater, of twenty bales of goods consigned to H. and W. of New York, on the 25th of September, 1839, on board the Lexington; and if yea, how do you know it?

To the ninth interrogatory he saith—There was such a bill of lading given to S and J. Slater, in my own handwriting. I know it by reference to the marginal writing of the bill of lading book, in my own hand, which is as follows: "S. and J. Slater, 20 bales—H. and W., New York, Sept. 20, '39."

Tenth interrogatory—Was there, or was there not, a bill of lading given to Isaac Brown, of five cases of goods, consigned to Fearings and Hall, on board the Massachusetts, on the 13th of August, 1840; and if yea, how do you know it, and who was clerk on board the boat on that day?

To the tenth interrogatory he saith—There was such a bill of lading; I know it by reference to the marginal entry of the bill of lading book, in my own handwriting, which is as follows: "Isaac Brown, 5 bales, F. and Hall, New York, August 13, 1840." I was the clerk on board the boat on that day.

Eleventh interrogatory—What was the form of those bills of lading?

To the eleventh interrogatory he saith—They were just the same as schedule "F," annexed to the deposition of R. E. Lockwood.

Twelfth interrogatory—Were there, or were there not, any goods shipped for J. and P. Rhodes, on board the Massachusetts, for which bills of lading were given, on the 25th of October and 13th of November, 1839?

To the twelfth interrogatory he saith—There was, I believe. The marginal writing in the book of bills of lading is in the handwriting of Jesse Comstock, and is as follows—(objected to by counsel for plaintiff)—"Fourteen bales cotton, for W. R. Bowers, fr. J. and P. Rhodes, Oct. 25, '39.—J. P." And "thirty-eight bales cotton, from W. R. Bowers, fr. J. and P. Rhodes, Nov. 13, '39."

Thirteenth interrogatory—Were there, or were there not, any goods shipped for W. J. King, on board the Massachusetts, for which bills of lading were given on the 25th of October, 1839, and for Manton and Fisher on the same day; and if yea, how do you know it?

To the thirteenth interrogatory he saith—There were, as I believe.

The marginal writing in the bill of lading book is in the handwriting of Jesse Comstock, and is as follows: "Seven bales for W. J. King, Ashton; twenty-seven for Manton and Fisher—M. F.—Oct. 25, '39.

(Objected to by counsel for the plaintiff.)

Fourteenth interrogatory—Were there, or were there not, any goods shipped for Hill, Chapin & Co., from P. G. Cox, on board the Lexington, for which bills of lading were given, on the 11th of September, 1839; and if yea, how do you know it?

To the fourteenth interrogatory he saith—There were, as I believe, by reference to the bill of lading book. The marginal writing is in the handwriting of H. P. Newman, and is as follows: "P. G. Cox, 16 bales—Hill, Chapin & Co., Providence, Sept. 11, '39."

(Objected to by counsel for plaintiff.)

Fifteenth interrogatory—Whether or not are the blank bills of lading remaining in the bill of lading book, in which the marginal notes are in the handwriting of Jesse Comstock, the same as schedule "F," referred to in the affidavit of R. E. Lockwood?

To the fifteenth interrogatory he saith—They are the same.

Sixteenth interrogatory—How did it happen that while you were clerk on board the Lexington, H. P. Newman gave out bills of lading?

To the sixteenth interrogatory he saith—He did so at my request, during my absence, while I went to the bank to make deposits, &c.

Seventeenth interrogatory—Was or was not the bill of lading, so given by Newman, the same in form as schedule "F," as above referred to?

To the seventeenth interrogatory he saith—It was the same, unless he altered the printed form. I now recollect that Newman's name was H. P. Newman, instead of Richard, as I have before deposed.

Cross examination.

First cross interrogatory—Has the New Jersey Steam Navigation Company ever changed the form of its bill of lading?

To the first cross interrogatory he saith—Not to my knowledge.

Second cross interrogatory—Do you know that they have not changed it?

To the second cross interrogatory he saith—I believe they have not; I never examined them to see.

Third cross interrogatory—Where were the marginal entries, which you have said were made by yourself, made?

To the third cross interrogatory he saith—At the time of giving out the bills of lading, and before they were cut out.

Fourth cross interrogatory—What was done with the bills of lading which were cut out.

To the fourth cross interrogatory he saith—They were delivered to the carman, or those who came for the goods.

Fifth cross interrogatory—Was it the custom of the company to require the presentation of the bill of lading before delivering the goods to the consignees?

To the fifth cross interrogatory he saith—It was not.

Sixth cross interrogatory—Did the company always give bills of lading for goods shipped, say in January, 1840?

To the sixth cross interrogatory he saith—As regards myself, if I were on board any boat at that time, my orders were to do so. I can't undertake to say positively that it was always done; I cannot speak as regards any boat excepting that in which I was at the time.

Seventh cross interrogatory—Does the company keep any file of the bills of lading returned?

To the seventh cross interrogatory he saith—We generally deliver the goods without requiring a bill of lading. No file is kept.

TH. C. GLADDING.

Sworn to, this 17th day of October, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM,
Commissioner.

Deposition of William F. Harnden.

UNITED STATES OF AMERICA,
Southern district of New York.

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

Be it remembered that, on this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and forty-two, before me, Joseph Bridgham, a commissioner duly authorized, under and by virtue of the annexed commission, to take the depositions of such witnesses as either party may request, to be used in a certain libel and complaint of John H. Clarke, of Providence, in the district of Rhode Island, against the New Jersey Steam Navigation Company, a corporation duly and legally incorporated by the legislature of the State of New Jersey, and established and transacting business at Jersey City, in said State of New Jersey, owners of the late steamboat Lexington, now pending before the circuit court of the United States, within and for said Rhode Island district, personally appeared William F. Harnden, to testify and the truth to say, on the part and behalf of the defendants, in the above mentioned matter.

And the said William F. Harnden being about the age of twenty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William F. Harnden, and he did thereupon depose, testify and say, as follows, viz:

First interrogatory—Where is your residence, and what is your occupation?

To the first interrogatory he saith—I reside at 12, Bedford street, Boston, Mass., and am one of the firm of Harnden & Co., express carriers.

Second interrogatory—Look at the paper now shown you, a copy of which is annexed, and testified to in the deposition of R. E. Lockwood, marked schedule "*M*," and say what that paper is?

To the second interrogatory he saith—It is a letter received by me

from Mr. Handy, relative to a renewal of contract with the New Jersey Steam Navigation Company, and was received by me shortly after its date.

(Objected to by counsel for the plaintiff.)

(It is agreed by the parties that the copy of the above letter, marked schedule "*M*," be annexed with the same effect as if the original were produced—the original letter remaining with Mr. Harnden.)

Third interrogatory—Have you ever seen Mr. Handy write; are you acquainted with his handwriting; and is the letter referred to in the foregoing interrogatory in his proper handwriting?

To the third interrogatory he saith—I have seen Mr. Handy write, and am well acquainted with his handwriting, and I know the foregoing letter is in his handwriting.

Fourth interrogatory—Look at schedule "O," hereunto annexed, and state what it is.

To the fourth interrogatory he saith—It is one of my cards, issued some time previous to the 31st day of December, 1839; and after I had entered into an arrangement with the Boston and New York Transportation Company for carrying my crates.

Fifth interrogatory—Why was the last clause on that paper put on it?

To the fifth interrogatory he saith—I was required to put it on by my contract with the Boston and New York Transportation Company. I think that the card above referred to is one of the lot first printed after my making an arrangement with the Boston and New York Transportation Company.

Sixth interrogatory—State how many of these cards were struck off at that time?

To the sixth interrogatory he saith—I ordered ten thousand, and I think received that number.

Seventh interrogatory—What circulation was given to those cards?

To the seventh interrogatory he saith—A very large circulation. I employed a man to go to the different towns within twenty miles of Boston, and to circulate there; and I sent them away, every chance I had, for a thousand miles. I circulated them myself in Boston, very thoroughly among the merchants and brokers, and the banks in particular.

Eighth interrogatory—State whether or not you left one of these cards at the Merchant's Bank, Boston.

To the eighth interrogatory he saith—It is my impression that I did, though I cannot swear positively.

Ninth interrogatory—What is your reason for supposing that you served one of these cards on the Merchant's Bank?

To the ninth interrogatory he saith—The only reason is, that it was my intention to leave the card at *all* the banks.

(The counsel for the plaintiff objects to any answer beyond the statement of facts.)

Tenth interrogatory—How long did your contract with the Boston and New York Transportation Company, for carrying your crates, last?

To the tenth interrogatory he saith—The contract was for one year; subsequently the name of the company was changed, but I cannot say when.

Eleventh interrogatory—State whether or not the boats employed by the Boston and New York Transportation Company, and those of the New Jersey Steam Navigation Company, are the same?

(Counsel for the plaintiff objects to all testimony on this subject.)

To the eleventh interrogatory he saith—They were the same boats, and the officers were the same. I knew of no change excepting in the name of the company.

Twelfth interrogatory—Did you, or did you not, receive from the Merchants' Bank, Boston, about forty-six thousand dollars in checks and drafts to collect in New York for that bank, in January, 1840?

To the twelfth interrogatory he saith—It is my impression that I received, at that time, about forty thousand dollars.

Thirteenth interrogatory—Who did you receive it from?

To the thirteenth interrogatory he saith—Either from Mr. Eldridge, the cashier, or Mr. Cooper, the teller. Sometimes I receive it from one, and sometimes from the other.

Fourteenth interrogatory—Did you receive those checks on your own account, or as agent for the Steam Navigation Company—the defendants—and when?

To the fourteenth interrogatory he saith—On my own account, payable to my order. I received the checks a few days previous to the loss of the Lexington?

Fifteenth interrogatory—What became of those checks?

To the fifteenth interrogatory he saith—I sent them to Dexter Brigham, jun'r, of New York.

Sixteenth interrogatory—What portion of those checks did you receive the money for?

To the sixteenth interrogatory he saith—All but about eighteen thousand dollars.

Seventeenth interrogatory—Did the Merchants' Bank give you any instructions relative to the manner in which these checks were to be sent on?

To the seventeenth interrogatory he saith—They requested me to send half of it at a time.

Eighteenth interrogatory—How did the Merchants' Bank deal with you, as principal or agent; and if as agent, for whom?

(Counsel for the plaintiff objects.)

To the eighteenth interrogatory he saith—They dealt with me as principal. They paid me certain per centage, which went into my own pocket.

The counsel for the plaintiff objects in time to evidence of any contract to which they are not respectively parties; not waiving that objection, they cross examine the witness de bene esse.

Cross examination.

First cross interrogatory—When did you receive the letter referred to in your direct examination?

To the first cross interrogatory he saith—I cannot state positively that it was within a week after; but I think it was received a few days after it was written.

Second cross interrogatory—Are you positive that you received the letter before the loss of the Lexington?

To the second cross interrogatory he saith—I am.

Third cross interrogatory—Did you ever write an answer to that letter?

To the third cross interrogatory he saith—I think not; I think I came on myself.

Fourth cross interrogatory—At what time were you first in New York after the 31st of December, 1839?

To the fourth cross interrogatory he saith—I am not able to tell; it was at the time the contract was signed, which, I think, was the 24th day of February, 1840, or thereabouts.

Fifth cross interrogatory—Did you sign any contract with the New Jersey Steam Navigation Company, between 31st of December, 1839, and 24th of February, 1840?

To the fifth cross interrogatory he saith—I did not. The contract signed on the 24th of February, 1840, was the only contract I signed subsequent to the 31st of December, 1839.

Sixth cross interrogatory—What did you do with the money you received on account of the Merchants' Bank, as you have stated above, being the balance received on the checks over the eighteen thousand dollars?

To the sixth cross interrogatory he saith—It was received by me at Boston, and delivered to the Merchants' Bank.

Seventh cross interrogatory—Did you ever pay them the eighteen thousand dollars, or any part of it?

To the seventh cross interrogatory he saith—I did not.

Eighth cross interrogatory—Did the defendants ever pay you that eighteen thousand dollars, or any part of it?

To the eighth cross interrogatory he saith—They did not.

Ninth cross interrogatory—Have you ever paid any one for the property lost on board the Lexington?

To the ninth cross interrogatory he saith—I have not.

Tenth cross interrogatory—Did you act under any special contract with the Merchants' Bank of Boston?

To the tenth cross interrogatory he saith—No, I can't say that I did; I acted for them as I did for other parties. They frequently sent for me to collect specie for them, and gave me the checks for the purpose of doing so.

WM. F. HARNDEN.

Sworn before me, this twenty-fifth day of October, 1842, having been first read to, and subscribed by, the witness in my presence.

JOSEPH BRIDGHAM, *Commissioner.*

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Joseph Bridgham, a commissioner duly authorized by the circuit court of the United States for the district of Rhode Island, in the first circuit, under and by virtue of the annexed commission, do hereby certify, that the reason for taking the foregoing depositions is, and the fact is, that the witnesses reside more than one hundred miles from the place of trial of this cause. I further certify, that a notification of the time and place of taking the said depositions, signed by me, was made out and served on Emerson and Pritchard, esq'rs, the counsel for the plaintiff, and on George R. J. Bowdoin, esq., the counsel for the defendant, in the within named cause, to be present at the taking of the depositions, and to put interrogatories if he or they might think fit. I further certify, that on the 11th, 14th, 15th, 22d, 23d and 24th days of March, and on the 7th, 8th, 12th, 13th, 14th, 15th and 28th days of April, and on the 11th, 12th, 13th and 18th days of May, and on the 8th day of June, and the 17th and 25th days of October, in the year one thousand eight hundred and forty-two, I was attended by counsel for the respective parties, and by Joseph Bishop, Elihu S. Bunker, James Murphy, Theodosius F. Secor, Charles B. Smith, Jacob H. Vanderbilt, David Crowley, Roswell E. Lockwood, Caleb A. Townsend, Thomas C. Gladding, William F. Harnden, and Stephen A. Manchester, who were of sound mind and lawful age, and the witnesses were by me first carefully examined, and cautioned, and sworn, to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of sealing up and forwarding the same with my own hand to the court for which the same were taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this sixteenth day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

JOSEPH BRIDGHAM,
Commissioner.

Schedule A,

Referred to in the foregoing deposition of Peleg Hall.

Shipped in good order and well-conditioned by Whitaker & Sampson, on board the ship called the Rienzi, whereof Norton is master, now lying in the port of Mobile, and bound for New York, to say:

J. H. C. ‡ 1 a 30
13,558 lbs. c. §. 84 74
5 p. c. 4 23
$88 97

Thirty square bales cotton, under deck, to be reshipped to Providence, free of commission, being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York, (the dangers of the seas only excepted,) unto Messrs. Post and Phillips, or to their assigns; he or they paying freight for the said cotton, five-eighths of one cent per pound, with 5 p. c. primage.

In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at Mobile, the sixteenth day of December, 1839.

P. O. NORTON.

Please receive the above cotton, and ship the same by first steamboat.

I send by Mr. Hall check on your house for - -	$87 50
Cash - - - - - - - -	2 50
	$90 00

Schedule marked "A," shown to and deposed unto by the witness, Peleg Hall, on his examination before me, on this 15th day of June, 1842.

JOSEPH BRIDGHAM,
Commissioner.

[For maps see original.]

Schedule C,

Referred to in the foregoing deposition of Frederick W. Hempstead.

STATE, CITY, AND COUNTY OF NEW YORK, *ss.*

Frederick William Hempstead, of Brooklyn, King's county, in the State aforesaid, being sworn, says, that he is a steamboat engineer by occupation, and that he has followed that business for 21 years last past, and he is now thirty-five years old; that he has been 2d engineer of the steamboat William Gibbons, and first engineer of the steamboat David Brown, both of which were on the line from Charleston, S. C., to N. Y., has been 7 years engineer on board of the steam ferry boats between N. Y. and Brooklyn, on the Catharine st. ferry; that Cortland Hempstead, the only brother of deponent, was the chief engineer of the steamboat Lexington, about two or three months, as deponent thinks, next

before she was destroyed; that said Cortland was afflicted with a very severe cold about the beginning of the present month of January, and requested this deponent, in the name of Mr. Secor, to go as engineer in his (said Cortland's) place; and deponent consented to go, and accordingly went as engineer of the Lexington, on her trip to Stonington and back to N. Y., leaving N. Y. on Friday, the 3d day of Jan'y inst., and returning to New York on Tuesday, the 7th day of said Jan'y. Deponent says, that before setting out on said trip, his said brother cautioned him to take 4 boiler-makers with deponent, and on their arrival at Stonington to put some patches on the boiler, over the furnaces; and also to mend the blowers, or else that they would give deponent a great deal of trouble; and said Cortland, also, particularly cautioned deponent to take care of the brick partition, in the rear of the fire bars, called the bridge wall. Deponent asked him why? Said Cortland answered, the brick work is not sufficient; it is contract work. Said Cortland, at the same time, told deponent, that on the last preceding trip, said steamboat Lexington had been on fire from the blast of the fire breaking through the brick work above mentioned, and that a bale of goods, which was on fire, had been at that time thrown ashore from the boat before she left the dock at New York; and at the same time of this conversation, a joiner was at work on said boat, repairing the damage occasioned by said accident, on the last preceding trip; and deponent says, that he proceeded on said trip as engineer, and when abreast of Mr. Berg's ship yard, in the East River, he discovered that said steamboat was on fire alongside of the boiler, the fire having penetrated the bridge wall, and set fire to the pine wood that was piled up round the boiler, and the fire spread to the lower part of the main deck; deponent, with 2 firemen and a boy, succeeded in putting it out with hand buckets in about 15 or 20 minutes. Deponent then examined the said bridge wall, and found that it was pierced through by the fire produced by the blast of the blowers, and the bricks thrown down in one place on the starboard side; the wall was one brick, length (8 inches) in thickness. Deponent put up the fallen brick as well as he could, with some frozen mortar that he had in a bucket; when he found the boat was on fire, deponent stopped the engine and threw the belt *of* the blowers, to stop them from fanning the fire, and then told the second engineer to start the engine again, while deponent was putting out the fire, which he did, and the boat went on; but the blowers being stopped, there was no such blast against said bridge wall, as to hinder deponent from building it up; that afterwards deponent slacked up the belt, and set the blowers in motion again, and several times before arriving at Stonington, the wood near the boiler was on fire from the same cause, viz., the blast against said bridgewall, the mortar being so poor that it did not effectually stop up the crevices between the bricks, and deponent had to throw on water to put it out; but as the blowers were slackened, the blast did not throw down the bricks a second time. On the arrival of the boat at Stonington, deponent fixed up said bridge wall as well as he could, with good fresh mortar. Deponent says that, on returning to N. Y. in

said boat, the blast burst out said bridge wall in a new place, on the larboard side, near the leg of the boiler, and set fire to the wood near the boiler; deponent threw the belt off the blowers to stop them, and in so doing, broke the spur-wheel connected with them, so that the blowers could not be used again on that trip; deponent then extinguished the fire as before, with hand buckets. There were but three buckets belonging to the engine, and those were used; the rest of those belonging to the boat were all on deck; deponent then patched up the brick work as well as he could, and arrived in N. York in safety; deponent thinks said bridge wall was entirely insufficient to resist the blast of the furnace when *when* the blowers were in motion. Deponent further says that Charles Smith, a fireman on board of said steamboat, on the trip when she was destroyed, told deponent on one day, about the middle of last week, that on said last trip the Lexington was on fire before she got out of the East River; and deponent says that he believes, and has no doubt, that the destruction of said boat was caused by the blast of the fire against said bridge wall, which being insufficient, probably gave way, and set fire to the wood around, and so to the boat; deponent further says, that on returning from Stonington on said trip, he cautioned his said brother Cortland against going in said boat, telling him that those blowers would be the destruction of said boat; and deponent expressed the opinion to several persons, about the same time, that said blowers would destroy the boat.

(Signed) F. HEMPSTEAD.

Sworn, this 28th day of January, A. D. 1840, before me,

(Signed) JOSEPH STRONG,
Commissioner of deeds.

I hereby certify that schedule "C" is a true copy of the paper writing shown to and testified to by the witness, Frederick W. Hempstead, at the time of his examination before me, the 23d day of February, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule E,

Referred to in the foregoing deposition of David Crowley.

[For drawings see original.]

Schedule marked "E," shown to and testified to by the witness, David Crowley, on his examination before me, this 28th day of April, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule F,

Referred to in the foregoing deposition of Roswell E. Lockwood.

New Jersey Steam Navigation Company.

Received of on board the steamer master,

marked and numbered as in the margin, to be transported to and there to be delivered to or assigns, danger of fire, water, breakage, leakage, and all other accidents, excepted; and no package whatever, if lost, injured or stolen, to be deemed of greater value than two hundred dollars; freight, as customary with steamers on this line.

For G. & R. J. Bowdoin, agts.

N. B. The company are to be held responsible for ordinary care and diligence only, in the transportation of merchandise, and other property, shipped or put on board the boats of this line.

Dated at the 18

(Contents unknown.) master.

Schedule marked "*F*," shown to, and testified to, by the witness, Roswell E. Lockwood, on his examination before me, this 12th day of May, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule G,

Referred to in the foregoing deposition of Caleb A. Townsend.

Notice to Shippers and Consignees.

All goods, freight, baggage, bank bills, specie, or any other kind of property taken, shipped or put on board the steamers of the New Jersey Steam Navigation Company must be at the risk of the owners of such goods, freight, baggage, &c.; and all freight consisting of goods, wares and merchandise, or any other property landed from the steamers, if not taken away from the wharf without delay, will be put under cover at the risk of the owners of said goods, freight, baggage, &c., in all respects whatsoever.

Schedule marked "G," shown to, and testified to, by the witness, Caleb A. Townsend, on his examination before me, this 13th day of May, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule H,

Referred to in the foregoing deposition of Roswell E. Lockwood.

This agreement, made and entered into, this fifth day of July, A. D. 1839, in the city of New York, by William F. Harnden, of Boston, Massachusetts, on the one part, and Ch. Overing Handy, President of

the Boston and New York Transportation Company, of the other part, witnesseth:

That the said W. F. Harnden, for and in consideration of the sum of two hundred and fifty dollars per month, to be paid monthly, to the said Boston and New York Transportation Co., is to have the privilege of transporting, not to exceed once on each day from either end of the line, and as less frequently as they may run, in the steamers of said company, plying between Providence and New York, via Newport and Stonington, and vice versa, one crate of the dimensions of five feet by five feet in width and height, and six feet in length (contents unknown) until the 31st day of December, 1839, and from this date.

The following conditions are stipulated and agreed to as a part of this contract, to wit:

The said crate, with its contents, is to be at all times *exclusively* at the risk of the said William F. Harnden; and the Boston and New York Transportation Company will not be responsible either to him or his employers, for the loss of any goods, wares, merchandise, money, notes, bills, evidences of debt, or property of any description, to be conveyed or transported by him in said crate, or otherwise in any manner, in the boats of the said company.

Further, that the said Harnden is to attach to his advertisements to be inserted in the public prints, as a common carrier, the following nota bene:

"Take notice.—William F. Harnden is alone responsible for the loss or injury of any articles or property committed to his care, nor is any risk assumed, nor can any be attached to the Boston and New York Transportation Co., in whose steamers his crate is to be transported, in respect to it, or its contents, at any time."

Further, that the said Harnden is not to violate any provisions of the post-office laws; nor to carry any powder, matches, or other combustible materials of any kind, calculated to endanger the safety of said boats.

And that this contract may be at any time terminated by the Boston and New York Transportation Company, or by the said Harnden, upon one month's written notice.

Further, that an agreement made by the said Harnden with the said Boston and New York Transportation Co. on the 13th of March last, and modified by additions thereto on the 20th and 24th of April last, is cancelled and rendered null and void, by both parties, from the date of this contract.

In witness whereof, the parties to this contract have hereunto set their hands and seals interchangeably, in the city of New York aforesaid, on the day and year above written.

In width and height, and six feet in length, on 15th line, first page, interlined before signing.

WM. F. HARNDEN, [L. S.]
CH. OVERING HANDY, [L. S.]
Pres't B. & N. Y. Trans. Co.

Signed, sealed and delivered in presence of—
ROSWELL E. LOCKWOOD.

I hereby certify that schedule marked "*H*," is a true copy of the paper writing produced and testified to by the witness, Roswell E. Lockwood, on his examination before me, this 8th day of June, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule I,

Referred to in the foregoing deposition of Roswell E. Lockwood.

This agreement, made and entered into this first day of August, A. D. 1839, in the city of New York, by William F. Harnden, of Boston, Massachusetts, on the one part, and Ch. Overing Handy, President of the New Jersey Steam Navigation Company, of the other part, witnesseth:

That the said William F. Harnden, for and in consideration of the sum of two hundred and fifty dollars per month, to be paid monthly to the said New Jersey Steam Navigation Company, is to have the privilege of transporting in the steamers of said company, between New York and Providence, via Newport and Stonington, not to exceed once on each day, from New York and from Providence, and as less frequently as the boats may run between and from said places, one wooden crate, of the dimensions of five feet by five feet in width and height, and six feet in length, (contents unknown) until the 31st of December, A. D. 1839, and from this date.

The following conditions are stipulated and agreed to, as part of this contract, to wit: the said crate, with its contents, is to be at all times *exclusively* at the risk of the said William F. Harnden; and the New Jersey Steam Navigation Company will not, in any event, be responsible, either to him or his employers, for the loss of any goods, wares, merchandise, money, notes, bills, evidences of debt, or property of any and every description, to be conveyed or transported by him in said crate, or otherwise, in any manner, in the boats of the said company.

Further, that the said Harnden is to attach to his advertisements, to be inserted in the public prints, as a common carrier, exclusively responsible for his acts and doings, the following notice, which he is also to attach to his receipts or bills of lading, to be given in all cases for goods, wares and merchandise, and other property committed to his charge, to be transported in said crate, or otherwise:

"Take notice.—William F. Harnden is alone responsible for the loss or injury of any articles or property committed to his care; nor is any risk assumed, nor can any be attached, to the proprietors of the steamboats in which his crate may be, and is transported in respect to it, or its contents, at any time."

Further, that the said Harnden is not to violate any provisions of the post-office laws, nor to interfere with the N. J. Steam Nav. Co. in its transportation of letters and papers, nor to carry any powder, matches, or other combustible materials of any kind, calculated to endanger the safety of said boats, or the property or persons on board of them.

And that this contract may be at any time terminated by the New

Jersey Steam Navigation Company, or by the said Harnden, upon one month's notice given in writing.

Further, that a contract made by the said Harnden with the Boston and New York Transportation Company, on the 5th day of July, A. D. 1839, is hereby dissolved by mutual consent.

In witness whereof the said William F. Harnden has hereunto set his hand and seal, and the President of the said New Jersey Steam Navigation Company has hereto affixed his signature, and the corporate seal of the company,

WM. F. HARNDEN, [L. S.]
CH. OVERING HANDY,
President.

Sealed and delivered in presence of—
ROSWELL E. LOCKWOOD.

{ L. S. N. J. STEAM NAV. CO. }

I hereby certify, that schedule marked "I," is a true copy of the original paper writing, shown to, and testified to, by the witness, Roswell E. Lockwood, on his examination before me, this 8th day of June, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule J,

Referred to in the foregoing deposition of Roswell E. Lockwood.

BOSTON, Dec'r 7, 1839.

No. 9, Court street.

CHAS. O. HANDY, ESQ.—Dear Sir: My present contract with the New Jersey Transportation Co. will expire on the 1st of January next, and I should like to have it renewed.

I am informed your company have done sending through baggage men. Can I make an arrangement with you to have my men do that duty for you? I will do it for a small compensation.

Please answer soon, and you will much oblige your obedient serv't,
WM. F. HARNDEN.

CHAS. O. HANDY, esq.,
Pres't of New Jersey Trans. Co., 22, Broadway, New York.

I hereby certify, that schedule marked "*J*," is a true copy of the original paper writing, shown to, and testified to, by Roswell E. Lockwood, on his examination before me, this 8th day of June, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule K,

Referred to in the foregoing deposition of Roswell E. Lockwood.

OFFICE NAV. CO., NEW YORK, Dec. 9, 1839.

Mr. WM. F. HARNDEN—Dear Sir: I have received your letter of the 7th inst., and will have your proposition, for a renewal of your present contract, submitted on the meeting of the board, and let you know the result.

Your proposition respecting baggage men, &c., I will submit to Major Whistler, when I see him. He made the arrangement for the employment of these men. I am, respectfully,

CH. OVERING HANDY, *Pres't.*

I hereby certify, that schedule marked "*K*" is the paper writing shown to, and testified to, by Roswell E. Lockwood, on his examination before me, this 8th day of June, 1842.

JOSEPH BRIDGHAM, *Commissioner.*

Schedule L,

Referred to in the foregoing deposition of Roswell E. Lockwood.

Copy. BOSTON, Dec. 16, 1839.

No. 9, Court street.

CHAS. OVERING HANDY, ESQ., President N. J. Trans. Co.—Dear Sir: In my last letter to you, I made the enquiry if you would renew my contract; I received your answer, stating that my proposition would be submitted to the board of directors. I did not name my time for the contract in my last letter. I would now respectfully solicit a contract for three years. I propose extending my line south of New York and east of Boston; but it will not be safe for me to do so, unless I can be sure of a contract on the New York and Boston route for a longer time than one year. Gen. Staples has done selling your boat tickets; I will take and sell them free of charge, provided you will give me the contract I apply for.

The Worcester and Norwich railroads have offered me very good terms to take a contract from them for five years.

Very respectfully, your obedient serv't,

WM. F. HARNDEN.

CHAS. OVERING HANDY, esq., Pres't N. J. Trans. Co., New York.

I hereby certify that schedule marked L, is a true copy of the original paper writing, shown to, and testified to, by Roswell E. Lockwood, on his examination before me, this 8th day of June, 1842.

JOSEPH BRIDGHAM, *Commissioner.*

Schedule M,

Referred to in the foregoing deposition of Roswell E. Lockwood.

OFFICE N. J. S. NAV. CO., NEW YORK, Dec. 31, 1839.

Mr. W. F. HARNDEN, No. 9, Court st., Boston.

Dear Sir: In consideration of your offer to sell, without compensation, when hereafter requested to do so, tickets for the steamers belong-

ing to this Co., the board of directors have authorized me to renew the contract which expires with you to-day, for one year, from the 1st January next, *on the same terms*, and terminable by one month's notice, at any time, from either party. They cannot, consistently with their practice, enter into contracts for a longer period than a year, which, I think, need not embarrass you; for should the relations of the company with you continue as satisfactory as they have been, I apprehend you will not find them unreasonable in reference to any future negotiations. I will have the contract prepared for signature when you come to the city.

I am, yours, respectfully,

CH. OVERING HANDY, *Pres't.*

I hereby certify that schedule "M" is the paper writing shown to, and testified to, by the witness, Roswell E. Lockwood, on his examination before me, this 8th day of June, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule N,

Referred to in the foregoing deposition of Roswell E. Lockwood.

This agreement, made and entered into this twenty-fourth day of February, A. D. one thousand eight hundred and forty, in the city of New York, by William F. Harnden, of Boston, Massachusetts, on the one part, and Ch. Overing Handy, President of the New Jersey Steam Navigation Company of the other part, witnesseth:

That the said William F. Harnden, for and in consideration of the sum of two hundred and fifty dollars per month, to be paid monthly, to the said New Jersey Steam Navigation Company, is to have the privilege of transporting, in the steamers of said company, between New York and Providence, via Newport, or between New York and Stonington, not to exceed once on each day, from New York and from Providence, or Stonington, and as less frequently as the boats may run from and between said places, one wooden crate, of the dimensions of five feet by five feet in width and height, and six feet in length, (contents unknown) until the 31st of December, of the present year.

The following conditions are stipulated and agreed to as part of this contract, to wit: the said crate, with its contents, is to be at all times *exclusively* at the risk of the said William F. Harnden; and the New Jersey Steam Navigation Company will not, in any event, be responsible either to him or to his employers, for the loss of any goods, wares, merchandise, money, notes, bills, evidences of debt, or property of any and every description, to be conveyed or transported by him in said crate or otherwise, in any manner, in the boats of the said company.

Further, that the said William F. Harnden is to attach to his advertisements, to be inserted in the public prints, the following notice, clearly shewing that he is to be exclusively responsible for his acts and doings in the premises, and that the said company shall not, in any way, be liable therefor, to wit:

"Take notice.—William F. Harnden is alone responsible for the loss or injury of any articles, or property of any description soever, committed to his care; nor is any risk assumed by, nor can any be attached to, the New Jersey Steam Navigation Company, in whose steamboats his crate may be and is transported, in respect to it or its contents, at any time;" which notice the said William F. Harnden is also to attach to his receipts or bills of lading, to be given in all cases for goods, wares, and merchandise, and other property committed to his charge, to be transported in his crate aforesaid, or otherwise; and shall also post up in the places where his dealers transact their business, notice to the like effect and in the same words.

Further, that the said Harnden is not to violate any provisions of the post-office laws, nor to interfere with the N. J. Steam Navigation Company in its transportation of letters and newspapers; nor to carry any powder, matches, or other combustible materials of any kind, calculated to endanger the safety of said boats, or the property or persons on board of them; and that this contract may be at any time terminated by the New Jersey Steam Navigation Company, or by the said Harnden, upon one month's notice given in writing.

In witness whereof, the said William F. Harnden has hereunto set his hand [and] seal, and the President of the said N. J. Steam Navigation Company has hereto affixed his signature and the corporate seal of the company, on the day and date before written.

WM. F. HARNDEN, [L. S.]
CH. OVERING HANDY,
Pres't N. J. Steam Nav. Co.

Sealed and delivered in presence of—The words "is also to attach," between the 7th and 8th line from the bottom of the second page, interlined before signing.

ROSWELL E. LOCKWOOD.

{ L. S. N. J. STEAM NAV. CO. }

I hereby certify, that schedule marked "N," is a true copy of the original paper writing shown to, and testified to, by Roswell E. Lockwood, on his examination before me, this 8th day of June, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Schedule O,

Referred to in the foregoing deposition of William F. Harnden.

Boston and New York Express Package Car—Notice to Merchants and all business men.—William F. Harnden having made arrangements with the New York and Boston Transportation and Stonington and Providence Railroad Companies, will run a car through from Boston to New York, and vice versa, via Stonington railroad, with the mail train, daily, for the transportation of specie, small packages of goods, and bundles of all kinds. Packages sent by this line will be delivered early on the following morning, at any part of the city, free of

charge. A responsible agent will accompany the car, for the purpose of purchasing goods, and collecting drafts, notes and bills; and will transact any other business that may be entrusted to his charge.

Packages for Salem, Lowell, Andover, and Worcester, Mass., Portsmouth and Concord, N. H., Gardiner, Augusta, Portland and Bangor, Maine; and for New Haven, Hartford, Albany, Troy, Philadelphia, Baltimore and Washington, will be forwarded immediately on their arrival in New York or Boston.

All packages must be sent to office No. 9, Court street, Boston, or No. 2, Wall street, New York.

References:

George Bond & Sons,
Bryant, Sturgis & Co.,
John E. Thayer & Bro.,
Nathan Hale, esq.,
J. W. Clark & Co.,
B. B. Mussey,
} Boston.

John T. Smith & Co.,
R. H. Winslow,
James W. Hale,
} New York.

N. B. All packages and bundles must be marked to his care.

William F. Harnden is alone responsible for the loss or injury of any articles or property committed to his care; nor is any risk assumed by, or can any be attached to, the Boston and New York Transportation Company, in whose steamers his crate is to be transported, in respect to it, or its contents, at any time.

Schedule marked "O," shown to, and testified to, by the witness, William F. Harnden, on his examination before me, this 25th day of October, 1842.

JOSEPH BRIDGHAM,
Commissioner.

Costs of taking Depositions, &c.

Plaintiff's costs.

Notice to parties—cp. and service,	$0 50
Administering oath to 10 wits. at 1 s. each,	1 25
Taking depo. of 10 wits.—102 fol. at 3 s.	38 50
Certifying 3 exhibits, at 2 s. each,	75
Com'rs certificate, $1 00,	1 00
Attendance, 10 days, at $2 00 per diem,	20 00
Commissioner's fee on sealing and forward'g,	1 00
	$63 00

Costs of taking Depositions, &c.

Defendant's costs.

Notice to parties—cp. and service,	$0 50
Administering oath to 12 wits. at 1 s.	1 50
Taking depositions of 12 wits.—410 fo. a 3 s., schedule, &c.	154 87½

Certifying 12 exhibits, at 2 s. each,	$ 3 00
Attendance, 26 days, at $2 00 per diem,	52 00
Commissioner's certificate, $1 00,	1 00
Sealing and forwarding, $1 00,	1 00
	$213 87½

New York, Dec. 16th, 1842.—Received of Charles Overing Handy, $213 87½, for defendant's costs of commission in the within entitled suit.

JOSEPH BRIDGHAM,
Commissioner.

Circuit court, November term, 13th day, A. D. 1842.
Opened in court.

J. T. PITMAN, *Clerk.*

Commission.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

[L. S.] The circuit court of the United States, within and for the Rhode Island district, to Samuel W. Peckham, of Providence, esquire, greeting:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, to take the testimony of such witnesses as may be brought before you by either party, (interrogatories waived) to be used in a certain cause now pending in said court, wherein John H. Clarke are libellants, and the New Jersey Steam Navigation Company are respondents; and to this end, at certain days, to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission, and your doings herein enclosed, sealed and directed to the circuit court aforesaid, as soon as may be.

In testimony whereof, we have caused the seal of the said court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Providence, this ninth day of November, in the year of our Lord one thousand eight hundred and forty-two.

JOHN T. PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, Nov. 9, 1842.

Then personally appeared the aforenamed Samuel W. Peckham, and made oath, that he would faithfully and impartially discharge his duties according to the best of his skill and understanding.

Before me, JOHN T. PITMAN, *Clerk.*

Deposition of Martin Stoddard.

I, Martin Stoddard, of the city and county of Providence, on oath do testify and say:

Question by C. S. Bradley, esq.

1. Please to state what you know about the fire on board the steamer Lexington, in the winter of 1839?

Mr. Ames objects to this question, or to any question being put to this witness, on the ground that he is a stockholder in the New Jersey Steam Navigation Company, and the witness refuses to answer any questions for the same reason.

SAM'L W. PECKHAM, *Com'r.*

Nov. 9, 1842.

Deposition of Isaac P. Hazard.

I, Isaac P. Hazard, of South Kingston, in the county of Washington, on solemn affirmation, do testify and say:

Question by R. W. Greene, esq.

1. Were you a passenger in the steamboat Lexington, from Stonington to New York, in the month of January, 1840?

Ans. I can't answer that; I was a passenger in her not many trips before she was lost; my impression is, that it was in December, on Christmas night; I can't state positively; all I can state is, that I was a passenger in her within a month before she was lost—about a fortnight or ten days before.

2. While on the passage, did you feel alarmed for your safety, and did you consider the steamboat unsafe?

(This question is objected to by the counsel for defendants, because it asks the opinion of the witness.)

Ans. I was very much alarmed in that boat, and it was my opinion that we were unsafe: I don't think I was ever so much alarmed in my life; it was a rough night.

3. Did you make any communication to Captain Elihu Bunker on your arrival at New York; if yea, please to state what that communication was?

Ans. I stopped at Bunker's son's, and I saw him every evening while I was there, I should think, and asked him the difference between running the Lexington and the President—that I was very much alarmed on board the boat that night, and considered her unsafe; that I considered it very important to the citizens of Providence, and the citizens generally, that a different boat should run; and I feared that serious consequences would ensue; that when she was lost we should all awake to this subject; I stated it to other persons in the city of New York, and my friends.

Cross examination.

Questions by Sam'l Ames, esq.

1. What was the particular danger that you apprehended?

Ans. I don't know; there was a general feeling of insecurity about

it; the boat, when she tipped over, would not come back again until we got on to the other side; would not come back readily; she lay a long time on one side; we did not always get on the opposite side; she sometimes righted without.

ISAAC P. HAZARD.

Witness fees—1 day, 1 25.
travel

Subscribed and affirmed to, December 3d 1842.
Before me,
SAM'L W. PECKHAM, *Com'r.*

Deposition of Thomas R. Hazard.

I, Thomas R. Hazard, of Portsmouth, in the county of Newport, on solemn affirmation, do testify and say:

Questions by R. W. Greene, esq.

1. *Was* you a passenger on board the steamboat Lexington, from Stonington to New York, on the trip next previous to the one in which she was lost?

Ans. I went in her on the trip next previous to the one in which she was lost, or the next but one previous, I don't recollect which. If she went every day, I think it was the next but one previous; if she went 2 or 3 times a week only, it was the next one previous.

2. Did you, on your arrival at New York, make any communication to Capt. Elihu Bunker, or Capt. William Comstock, with regard to the safety of said boat; if yea, please state what that communication was?

Ans. Capt. William Comstock, I came back with. I talked with him some about it. I don't remember the particulars of the conversation. This was after we had heard of the Lexington's loss; we heard of it just after we came on board; there was a great excitement on board; I heard of it before I went on board. I think it was after my arrival, and before we had heard any report of the Lexington's being burnt, I conversed with Capt. Bunker, the old man, on the subject of the Lexington's fitness to run. He was an inspector at the time; and in the (the defendant's counsel objects to the opinions of this witness) course of the conversation I expressed an opinion that the Lexington was not a safe boat; remarking, that although not much acquainted with the boat myself, it appeared to be the almost universal opinion of the travelling public that she was not safe; and that when such an opinion prevailed so universally, there was generally good cause, or some cause for it, or words to that effect. I don't remember the words. He insisted that he considered her safe, and said, if I remember right, that he had lately examined her works; and he became somewhat warm on the subject, or earnest, upon my still persisting in my belief of her unsuitableness to run.

3. State what you observed on the passage, which led you to believe that the boat was an unsafe one?

Ans. The Lexington had always had the name of being a racing boat; and all boats of that description I have ever been prejudiced

against; which was of itself sufficient to cause me to think her unsafe; and I had ever avoided going in her on that account. At that particular time I went with my mother-in-law, who was called to New York suddenly, to see a sick relation; the urgency of the case outweighed my objections to going in her. While on the passage, during the night of the passage, I felt more uneasy than I usually did in making passages in other boats, which I had hitherto frequently done. This uneasiness might have been caused, mostly, on account of a previous prejudice, but was undoubtedly increased from observations I made during the passage. I am very sure that we stopped frequently during the night, and we could not find out why she stopped; and there were several things which made me feel unpleasantly, and I remarked to my mother-in-law at the time, that we would not return in her. I think we stopped—I am not sure—it is possible that it might have been on some other boat, and I have got it confounded; but my impression is, that she stopped. I remember looking at the fire and being struck very unpleasantly by something connected with it. I do not distinctly remember what, farther than its being in a situation not easily to be got at, owing to the crowded state of the deck; and I think I remarked, more than once, that in case the boat should take fire, it would be almost impossible to extinguish it—so few could be brought to assist in putting it out—so little labor could be brought to bear on it, in consequence of the deck being so crowded, and the peculiar position of the fire; but the deck was no more crowded than it was on board the Providence on our return. I recollect, that on board the Providence, one side of the gangway was so blocked up, that no one could pass, and the other side, so that two could not pass together; they were closed with bales of cotton, so that they could not be easily removed. On board the Lexington that night, they burned coal, and the heat was rendered very intense by means of a blower. I think the fire was under deck, and it did not look open, so that you could get at it handily; every thing struck me unpleasantly; there was a good deal of confusion on board; the circumstances were perhaps too minute to particularize, which caused my unpleasant feelings, but when combined, operated with much weight on my mind to convince me that the boat was unsafe—partly from the circumstances before related with regard to the fire, and also her management. The servants did not seem to act as they did on board other boats; there seemed to be less order and discipline on board, than in the regular line, in which I had been in the habit of going. I can't say that I saw any thing particular about the crew; I can't seperate the servants from the crew; the boat seemed to want a head. I do not know but there was the best of discipline, but my impressions were to the contrary.

Cross examination.

Questions by Sam'l Ames, esq.

1. What do you mean when you say there was a good deal of confusion on board?

Ans. The confusion seemed to pervade the whole boat—every department, as far as I observed; and many of the passengers appeared to be uneasy.

2. Please to name some particular instances of confusion?

Ans. I cannot call any particular instance to mind; there seemed to be a disposition to find out the cause of stopping, that created a good deal of confusion. If I remember, they would not answer the passengers—would not tell them the cause.

3. Did you apply to know the cause; if so, to whom?

Ans. I don't remember applying, but I have very little doubt that I did repeatedly apply, with others; as I said before, it may have occurred on board some other boat, but I am pretty positive that it was on board this one. I believe it is generally the case, that the hands do not readily answer questions of passengers on board these boats relative to the accidents that occur.

4. State any particular want of discipline which you observed on board the boat, in the crew, and in what portion of the crew.

Ans. My memory cannot particularize any case, if any such did occur—I merely retain the general impression; it happened some time since.

Direct resumed.

1. Did you not have an impression while on the passage, and was not the impression entertained by other passengers, that the Lexington was on fire?

(Objected to by defendant's counsel.)

Ans. I don't remember that I had any impression that she was actually on fire, though I had fears that she might get on fire. There appeared to be a slight panic among the passengers. I don't know that they had any impression of her being on fire. I think that one cause of the stopping was something connected with the blower.

Cross examination.

5. Please particularize what there was particular about the blower?

Ans. As I said before, we could not ascertain what the cause of the stopping was, and we were left to our own conjectures.

6. What did you observe about the blower that gave rise to your conjectures?

Ans. I think the noise it made struck me as being unnecessary, provided it run properly.

7. What was the particular character of the noise?

Ans. I don't know; it was not strictly a mechanical noise—a noise such as machinery makes when out of order. It was not the blowing that struck me; it was an irregular sound—a jarring or grating sound.

8. Do you know any thing about the construction of blowers; if so, did you examine this blower?

Ans. No, I know but very little about the construction of blowers; and

this was in such a position, that I could not have examined it without going into the engine room, if I had wished to. I did not examine the blower.

THOMAS R. HAZARD.

Witness fees, 1d. 1 25.
Travel,

December 3, 1842. Subscribed and affirmed to, before me,
SAM'L W. PECKHAM, *Com'r.*

Commissioner's report.

To the honorable circuit court of the United States for the district of Rhode Island, sitting in admiralty.

I, Sam'l W. Peckham, the within named commissioner, do respectfully report, that on the 9th day of November, 1842, Martin Stoddard was summoned to attend before me and give his deposition on behalf of the within named plaintiffs, and did attend before me on that day, and having been duly sworn, the interrogatory herewith returned was put to him by the plaintiff's counsel, which was objected to by defendant's counsel, on the ground that the witness was a stockholder in the New Jersey Steam Navigation Co., and the witness refused to answer any questions for the same reason, and thereupon the examination of said witness was suspended. That, on the 3d day of December, 1842, I met the parties, by their counsel, and took the depositions of Isaac P. Hazard and Thomas R. Hazard, (herewith returned,) on the part of the plaintiffs, said witnesses having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, and said depositions were by me reduced to writing, in the presence of the deponents, and by them signed in my presence. SAM'L W. PECKHAM,
Commissioner.

Fees, $10.

Agreement to take testimony.

Circuit Court of the United States for the district of Rhode Island.

CHARLES C. LITTLE & Co.,
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY.

New York, August 13th, 1842.

We hereby consent and agree, that the within depositions of Dexter Brigham, junior, George W. Bampton, Richard Dongan, and George A. White, shall be read in evidence at the trial of this cause, in the same manner as if the same had been taken before a commissioner appointed by the courts of the United States to take affidavits and acknowledgments of bail, according to the act of Congress, in such case made and provided.

For pl'ffs,
CHAS. S. BRADLEY, *Att'y.*
CHARLES E. BUTLER,
For def'ts.

WILLIAM J. HOPPIN, *Commissioner.*

Nov. 8, 1842.—Opened per agreement of parties and order of court.
J. T. PITMAN, *Cl'k.*

Commissioner's fees—Administering 4 oaths		50
Depositions, 23 fol.	4	75
Certify exhibits		25
Commissioner's certif.	1	
Attendance, 2 days	4	
Seal'g and forwarding	1	
Engrossing contents		50
		$12

Circuit court of the United States for the district of Rhode Island.

CHARLES C. LITTLE & Co.,
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY.

Be it remembered, that on the twelfth day of August, one thousand eight hundred and forty-two, at number 52, Wall street, in the city and southern district of New York, before me, William J. Hoppin, counsellor at law and a commissioner to take acknowledgments of deeds, and for other purposes, for the State of Rhode Island, appeared Charles S. Bradley, esquire, attorney for Charles C. Little & Co., and Charles E. Butler, esquire, attorney for the New Jersey Steam Navigation Company, in a suit then depending in the circuit court of the United States for the district of Rhode Island, wherein the said Charles C. Little & Co. were plaintiffs, and the said New Jersey Steam Navigation Company were defendants; and the said attorney for the plaintiffs stated that the testimony of Dexter Brigham, junior, George W. Bampton, Richard Dongan, and George A. White was material and necessary for the said plaintiffs, in the prosecution of the said suit, and that they, the said Dexter Brigham, junior, George W. Bampton, Richard Dongan, and George A. White, resided at the city, and in the southern district of New York, more than one hundred miles from the city of Providence, in Rhode Island, where the court, at which they, the said plaintiffs, expected the said cause would be tried, was appointed by law to be held; and thereupon the said attorney of the said plaintiffs, and the said attorney of the said defendants, consented and agreed, that the witnesses aforesaid should be examined, de bene esse, before me, on the said twelfth day of August, and the following days, until the said examination should be concluded, at my office, No. 52, Wall street, in the city and district aforesaid, and the said defendants, by Charles E. Butler, esquire, their attorney, waived any further or other notice thereof, and consented that the depositions so taken should be read in evidence upon the trial of the said cause, in the same manner as if they had been taken before a commissioner appointed by the courts of the United States to take affidavits and acknowledgments of bail, according to the act of Congress in such case made and provided: and now, on the said twelfth day

of August, the said parties appearing before me, by their respective attornies aforesaid, at the place aforesaid, I have thereupon proceeded with the said examination.

Southern district of New York, ss.

And the said Dexter Brigham being carefully examined and cautioned, and by Folker J. Beck, esquire, (a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York,) duly sworn to testify the truth, the whole truth, and nothing but the truth, saith, in answer to the following questions, as follows:

Ques. Did you, on the thirteenth of January, 1840, receive for transportation certain packages of goods for C. C. Little and Co., to be forwarded to Boston, by the steamer Lexington?

Ans. I find on the book entered, three parcels for C. C. Little, one of them from the Philadelphia road; the other two I don't know where they came from.

Ques. What time was the entry made, and by whom?

Ans. On the thirteenth of January, by myself.

(Here the attorney for the plaintiff handed to the witness the annexed paper writing, marked A, and asked the witness)—

Ques. Is this the handwriting of William A. Bond?

Ans. I don't know; I should judge it was his.

(Mr. Butler, attorney for the defendants here objected to the introduction of the paper writing marked A.)

Cross examination.

Qu. *Are* you in the employ of Harnden & Co. at that time?

Ans. I was in the employ of Harnden at that time?

Qu. Were the three packages, referred to by you, received by Harnden for the purpose of transportation?

Ans. They were received by the establishment for forwarding to Boston.

Qu. Were they to be transported under the care of the agent of Harnden, and in their crates?

Ans. They were.

Qu. Is the managing, and the loading, and the stowing of that crate under the exclusive control of Mr. Harnden and his agents—I mean—of the crates used between New York and Boston?

Ans. They were under the management of the agent.

Qu. Who received any compensation for transporting those goods?

Ans. Harnden was to have received compensation.

Qu. Was any agreement, in relation to these specific goods, made with the defendants in this suit?

Ans. Not that I am aware of.

Direct examination resumed.

Qu. Was there any agreement to compensate the defendants in this suit, for goods carried by them through the agency of Harnden & Co.?

(Mr. Butler objects to this question.) W. J. H.

Ans. I do not know. I presume there was.

Cross examination.

Qu. Were the three packages, referred to by you, forwarded to Boston?

Ans. I do not know whether they were forwarded or not; but I presume so, as I found them entered on the book as forwarded by myself.

DEXTER BRIGHAM, JR.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said Dexter Brigham, Jr., and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

WILLIAM J. HOPPIN, *Commissioner.*

Southern district of New York, ss.

And the said George W. Bampton, being carefully examined, and cautioned, and by Folker J. Beck, esquire, (notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York,) duly sworn to testify the truth, the whole truth, and nothing but the truth, saith, in answer to the following questions, as follows:

Qu. What is your name, residence, and occupation?

Ans. My name is George W. Bampton; my residence 137, Allen street, in the city of New York; and my occupation that of accountant for the Union Transportation Company, for Philadelphia.

Qu. Were there any packages directed to C. C. Little & Co., of Boston, forwarded by you by the steamer Lexington, on the thirteenth of January, 1840?

Ans. There were two packages, one directed to C. C. Little & Co., and one marked "J. Dana, Charlestown, care of C. C. Little & Co., shipped by T. & J. W. Johnston, Philadelphia," forwarded by the steamboat Lexington by us.

Qu. Did you, on the same day, forward any packages besides these two packages, directed "C. C. Little & Co.," through the agency of Harnden & Co.?

Ans. We forwarded by Harnden & Co. one box for C. C. Little & Co., Boston, shipped by Thomas Cowperthwaite & Co., Philadelphia, for which we received our freight from their clerk, W. A. Bond, and for which we hold their receipt, being the paper herewith produced, marked A.

(Here the receipt, marked A, and hereunto annexed, was produced and shown to the witness, and identified by him as the receipt mentioned in his answer to the last question.)

Qu. Do you recognise this signature as being in the handwriting of W. A. Bond, and do you know that the said Bond was in the employment of Harnden & Co., and in what capacity he was employed?

(Mr. Butler objects to this question.)

Ans. I recognise this signature as being in the handwriting of Bond. He was in the employment of Harnden & Co., and attended to receiving packages from us, paying charges and giving receipts for the same, and taking the packages to be forwarded to the places to which they were directed.

Cross examination.

Qu. When did you see, for the first time, the two packages mentioned in your answer to the first direct interrogatory?

Ans. I can't say that I ever saw the boxes; nor can I say that I ever saw any of the boxes entered in our way bills at that time.

Qu. How do you know that the two boxes last mentioned were transported by the steamboat Lexington? Did you carry them there to that boat, or see them delivered on board?

Ans. We usually deliver the goods to our carman for the purpose of carrying them over to the boat, and delivering them to the agents of the boat, for purpose of transportation. I did not carry them, or see them delivered on board. I did not see them delivered to the carman. Orders were given to the carman to take them on board.

Qu. Was it not usual with the conductors of the steamboat Lexington to give bills of lading for all packages transported by that vessel?

Ans. It was not for goods shipped by us.

Qu. Were there not notices on board the steamboat Lexington declaring, in effect, that the owners would not be responsible for any packages for which a bill of lading was not given?

Ans. I can't say.

Qu. Why was it not usual for the conductors of the steamboat Lexington to give bills of lading to your concern?

Ans. From the fact that we usually shipped a number of packages consigned to different persons, and it would occasion considerable trouble on their part, I presume, to make bills of lading for these different boxes.

Qu. What is the Union Transportation Company?

(Mr. Bradley objects to this question.)

Ans. A company to transport goods to and from New York and Philadelphia.

Qu. About how many persons have they in their employ in the city of New York?

Ans. An agent, three clerks, three carmen, several laborers.

Qu. How many of the employees of the Union Transportation Company had care of, or took charge of, or handled the goods which arrived here by their line?

(Mr. Bradley, attorney for the plaintiffs, objects to this question and the two preceding questions.)

Ans. About six, I should suppose.

Qu. When and how were Harnden & Co. constituted the agents of the defendants?

(Mr. Bradley objects to this question.)

Ans. I do not know that they were the agents.

Qu. Do you know of your own knowledge what became of the box stated by you, in your direct examination, to have been delivered to the agent of Harnden & Co., after it was delivered to him?

Ans. I do not know.

Qu. Did Harnden at that time carry on the business of transporting goods and packages between here and Boston?

Ans. He did.

Qu. Were not agreements made with him for the transportation of such goods, and did he not receive the freight, seperate and independant of the defendants in this suit?

Ans. I do not know any thing at all about it?

Qu. Did you ever see W. A. Bond write?

Ans. I have.

G. W. BAMPTON.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said George W. Bampton; and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

WILLIAM J. HOPPIN, *Commissioner.*

A.

Received from the Union Transportation Line—
One box for C. C. Little & Co., Boston;
One box for Weeks, Jordan & Co., "
One box " Henshaw, Ward & Co., "
To be forwarded as directed. New York, Jan'y 13th, 1840.
Care of W. A. BOND.
WM. F. HARNDEN.

WILLIAM J. HOPPIN, *Com'r.*

"A."—This is the paper writing referred to in the depositions of Dexter Brigham, Jr., and George W. Bampton, hereunto annexed.

WILLIAM J. HOPPIN, *Com'r.*

August 13th, 1842.—Examination of George W. Bampton resumed.

Qu. You spoke in your examination yesterday of two packages directed, one "C. C. Little & Co." and the other "to the care of C. C. Little & Co." How were those packages described in the way-bill which came with them from Philadelphia?

[Mr. Butler objects to this question.]

Ans. The clerk in Philadelphia committed an error in describing the mark of the said two packages in our way bill, having entered them both in the name of C. C. Little & Co. The mistake was not discovered until their arrival here. He knows this only from the description given on our way-bill dated, January 11th, 1840, in Philadelphia, which is in some other person's handwriting.

GEO. W. BAMPTON.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said George W. Bampton, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

WILLIAM J. HOPPIN,
Commissioner.

Deposition of Richard Dongan.

And the said Richard Dongan being carefully examined and cautioned, and by Folker J. Beck, esquire, (a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York,) duly sworn to testify the truth, the whole truth, and nothing but the truth, saith, in answer to the following questions, as follows:

Qu. What is your name, residence and occupation?

Ans. My name is Richard Dongan; my residence No. 130, Amos street, in the city of New York; and I am a carman in the employment of Union Transportation Company, and have been so about seven years.

Qu. Did you or not, on the 13th January, 1840, deliver certain packages, how many, and how marked, from the depot of the Union Transportation Company on board the steamer Lexington?

Ans. I delivered two packages to the mate of the steamer Lexington, (that is the usual way of delivering goods,) marked—one for C. C. Little, and one to his care, for James Dana, Charlestown.

Qu. Did you take a bill of lading from the mate?

Ans. No, sir, I did not. We don't take any bills of lading—never have since I have been there.

RICHARD DONGAN.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said Richard Dongan, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

WILLIAM J. HOPPIN,
Commissioner.

Deposition of George A. White.

And the said George A. White being carefully examined and cautioned, and by Folker J. Beck, esquire, (a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York,) duly sworn to testify the truth, the whole truth, and nothing but the truth, saith, in answer to the following questions, as follows:

Qu. What is your name, residence, and what was your occupation, on the 13th January, 1840?

Ans. My name is George A. White, my residence is No. 57, Market street, and I have been a clerk for Wiley & Putnam, booksellers, for the last five years.

Qu. Did or did not Wiley & Putnam, early in January, 1840, sell to C. C. Little & Co., an invoice of books?

Ans. We received an order from C. C. Little & Co. for some books, early in January, 1840, which books were forwarded by the first steamer after the reception of the letter.

Qu. Please state the name and price of the books, and the day when forwarded?

Ans. The day was the eleventh of January, 1840.

The names and prices of the books were as follows:

Merimee on oil painting—price - - -	$3 25
2 co's Percy's relics, 3 vols., each - - -	7 50 (each.)
1 vol. each of volumes 2, 3 and 4 of Hallam's Literature—3 vols. in all - - - -	1 50 per volume.
1 Shakspeare Gallery, quarto, colored - -	18
1 Our Wild Flowers - - - -	5 50
1 Hallam's Literature, 4 vols., English edition -	15
The amount of the whole invoice is	$61 25

Qu. Is the book now produced the original book of entries, and was the entry made by you at the time of the sale?

(Here the witness produced a large account book, lettered on the back "Bookseller's Day Book, 1839—W. & P.")

Ans. This is the original book of entries, and this entry was made by me at the time of sale.

Qu. You say these books were forwarded by you on the eleventh of January—how were they forwarded?

Ans. I can't say positively; but to the best of my knowledge they were sent by Harnden's express, which I think was the order in the letter from Little & Co.

Qu. Were they forwarded by the steamer Lexington, on the night of the 13th?

Ans. I do not know whether they were or not.

Qu. Did you see those books, or any of them, or that package, after they were sent from your store?

Ans. I did.

Ques. Where, at what time, and in what condition?

Ans. I saw them at Harnden's office, two or three days after the destruction of the Lexington—part of the books, not all of them—in a very damaged condition—apparently damaged by water.

Cross examination.

Qu. You state in your direct examination that the package was forwarded by Harnden's express—do you mean by that any thing more than that they were sent from your store to Harnden's office?

Ans. No, sir, nothing more.

Qu. You know nothing of your own knowledge what they did with them?

Ans. No, sir—they were given to them for the purpose of forwarding according to their direction.

GEO. A. WHITE.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said George A. White, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

WILLIAM J. HOPPIN,
Commissioner.

Circuit court of the United States for the district of Rhode Island.

J. & P. RHODES,
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY.

New York, August 13th, 1842.—We hereby consent and agree that the within deposition of George Kinney shall be read in evidence at the trial of this cause, in the same manner as if the same had been taken before a commissioner, appointed by the courts of the United States to take affidavits and acknowledgments of bail, according to the act of Congress in such case made and provided.

For pl'ffs, CHA'S. S. BRADLEY, Att'y.
For def'ts, CHARLES E. BUTLER.
WILLIAM J. HOPPIN, *Commissioner.*

Nov. 8, '42.—Opened per agreement of parties and order of court.
J. T. P., *Cl'k.*

Commissioner's fees—Administering one oath,		12½
Depositions, 3 fol.,		75
Commissioner's certif.,	1	
Attendance, 1 day,	2	
Seal'g and forwarding,	1	
Engrossing contents,		50
		$5 37½

Deposition of George Kinney.

Circuit court of the United States for the district of Rhode Island.

J. & P. RHODES,
vs.
THE NEW JERSEY STEAM NAVIGATION COMPANY.

Be it remembered that, on the thirteenth day of August, one thousand eight hundred and forty-two, at number 52, Wall street, in the city and southern district of New York, before me, William J. Hoppin, counsellor at law and a commissioner to take acknowledgments of deeds and other purposes, for the State of Rhode Island, appeared Charles S. Bradley, esquire, attorney for J. & P. Rhodes, and Charles E. Butler, esquire, attorney for the New Jersey Steam Navigation Company, in a suit then depending in the circuit court of the United States for the district of Rhode Island, wherein the said J. & P. Rhodes were plaintiffs, and the said New Jersey Steam Navigation Company were

defendants; and the said attorney for the plaintiffs stated that the testimony of George Kinney was material and necessary for the said plaintiffs, in the prosecution of the said suit, and that he, the said Kinney, resided at the city and in the southern district of New York, more than one hundred miles from the city of Providence, in Rhode Island, where the court, at which the said plaintiffs expected the said cause would be tried, was appointed by law to be held.

And thereupon the said attorney of the said plaintiffs, and the said attorney of the said defendants, consented and agreed, that the witness aforesaid should be examined, de bene esse, before me, on the said thirteenth day of August, at my office, No. 52, Wall street, in the city and district aforesaid, and the said defendants, by Charles E. Butler, esquire, their attorney, waived any further or other notice thereof, and consented that the deposition so taken should be read in evidence upon the trial of the said cause, in the same manner as if they had been taken before a commissioner appointed by the courts of the United States to take affidavits and acknowledgments of bail, according to the act of Congress in such case made and provided; and now, on the said thirteenth day of August, the said parties appearing before me, by their respective attornies aforesaid, at the place aforesaid, I have thereupon proceeded with the said examination.

Southern district of New York, ss.

And the said George Kinney being carefully examined, and cautioned, and by Folker J. Beck, esquire, (a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York,) duly sworn to testify to the truth, the whole truth, and nothing but the truth, saith, in answer to the following questions, as follows:

Qu. What is your name, residence, and occupation?

Ans. My name is George Kinney; my occupation that of a cotton broker; and my residence No. 24, Sixth street, in the city of New York.

Qu. Did you make purchases of cotton for J. & P. Rhodes of Providence, on the 10th and 11th of January, 1840; and if so, of how many bales? and state particulars of the same.

Ans. I did—or rather our firm, Cahoone & Kinney, did. We purchased twelve bales, marked J. B. New Orleans cotton, of E. Laffau; also of Michael Crotty—diamond D—four bales New Orleans cotton, at 10¾ cents cash per pound, and ordered the same shipped by steamboat. We also paid for the same, on the 31st of January, 1840, one hundred and seventy-six dollars fifty-two cents. These last four bales were purchased on the 10th of January, 1840.

GEORGE KINNEY.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said George Kinney, and that I am not of counsel or attorney *from* either of the parties to the said suit, nor am I interested in the event thereof.

WILLIAM J. HOPPIN, *Commissioner.*

Commission.

UNITED STATES OF AMERICA,
Rhode Island district, ss.

[L. S.] The district court of the United States within and for the Rhode Island district.

To Messrs. Bliss and Dwight, of Springfield, in the State of Massachusetts, or either of them, or in case of their absence, to any justice of the peace in said Springfield.

Know ye, that reposing confidence in your wisdom, prudence and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed, of George W. Whistler, esq., to be used in certain causes now pending in said court, at law and in admiralty, in which claims are made against the New Jersey Steam Navigation Company, for losses of goods, &c., by burning of the steamer Lexington. And to this end, at certain days to be by you appointed for that purpose, to cause said witness, as aforesaid, to be brought before you, and said witness, while present before you, to examine carefully on oath touching the premises, and when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the district court aforesaid, as soon as may be.

In testimony whereof, we have caused the seal of the said district court to be hereunto affixed.

Witness the honorable John Pitman, at Providence, this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and forty-two.

JOHN T. PITMAN, *Clerk.*

Interrogatories to be propounded to George W. Whistler esq., a witness produced on the part of the New Jersey Steam Navigation Company, in the various suits brought against said company, at law and in admiralty, for losses sustained in the steamer Lexington.

Interrogatory 1st. How old are you, and what is and has been your profession?

Interrogatory 2d. Have you ever been engineer of the Stonington Railroad Co.; and if so, how long; and were you such engineer and agent for the trustees of said road, at the time of the loss of the Lexington in January, 1840?

Interrogatory 3. Were you in the habit of making frequent passages in the steamboats of the New Jersey Steam Navigation Co., previous and subsequent to the loss of the Lexington?

Interrogatory 4th. Did you ever examine particularly the steam chimney of the Lexington? if so, state when—what induced you to do so; describe it and the situation of the same, and what, if any thing, protected the promenade deck from it—give all the particulars.

Interrogatory 5. How many days before the Lexington was lost did this examination take place, what was the fuel used in the boat at the time for heating the boilers, and what was the condition of the smoke pipe—hot—red hot—or in what condition?

Interrogatory 6th. Would the smoke pipe be dangerous to the boat, if red hot; and if not, why not? State particularly and especially whether the smoke pipe passed through or was set on to the steam chimney, and at what point; whether above or below the promenade deck it set on to the steam chimney, and the effect of this.

Interrogatory 7. Do you know any thing of the boiler and blowing apparatus? and if so, state it.

Cross interrogatories to be propounded to George W. Whistler, esq.

1. What have been your means of knowledge about steamboat boilers and engines, as distinguished from those known as locomotive? Is there not a great and fundamental difference between the two kinds?

2. Have you stated any thing on your direct examination which you have learned from hearsay merely, or of which you do not know of your own personal knowledge? If yea, please to review the said examination, and designate all such matters therein as you do not personally know.

3. Had you any knowledge of the fire room of the Lexington? If yea, describe the same. What was next adjoining the boilers in every direction, and how near to it?

4. Were you ever on board the Lexington after the middle of December, 1839? If yea, how many times, how long, and where, particularly? Were any, and how wide, passages left in the freight from one end of the boat to the other? Describe, as fully as you can, the amount of freight on each trip from New York, and the manner in which it was stowed.

5. Did you know of the Lexington, her wood or freight, or any part thereof, taking fire on any trip when you were on board? If yea, describe the position and extent of said fire, and the direction in which it appeared to have commenced.

6. How high above the promenade deck of the Lexington have you ever seen her chimneys red hot? Were they not red hot above the promenade deck a great part of the time, while she was running with coal fires? Did you ever see them red hot at that height when she burnt wood?

7. What is the heat of a coal fire as compared with that of a wood fire in a steam boiler furnace? Describe the furnaces particularly, and the different effects of the different kinds of fuel; what is the effect upon such coal fires of blowers two feet long, making seven hundred revolutions in a minute?

8. If you undertake to describe the steam chimney, or the smoke pipe, or the condition of them, or either of them, describe also the steam chimney casing—the material and construction of it. Was it a fixture or moveable? What was it joined to, if any thing, at the top and bottom of it? What was the object of it?

9. Were you not, in some degree, moved to examine the Lexington because you knew, or had heard, or suspected, that she had been on fire before, or her wood or freight had been so?

10. Have you stated every thing within your knowledge tending to show want of caution in the defendants, or their agents, or servants, in or about the steamboat Lexington, in December, 1839, or January, 1840, in the way of omission, or of commission? If not, please to state all such matters as fully and particularly as if you were specially interrogated thereunto.

CHARLES F. TILLINGHAST,
Counsel for claimants.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

The deposition of George W. Whistler, of Springfield, in the county of Hampden and commonwealth of Massachusetts, a witness produced, sworn and examined, this sixth day of June, in the year of our Lord one thousand eight hundred and forty-two, under and by virtue of the annexed commission, issuing out of the district court of the United States within and for the Rhode Island district, to be used in certain causes now pending in said court, at law and in admiralty, in which claims are made against the New Jersey Steam Navigation Company, for losses of goods, &c., by burning of the steamer Lexington.

George W. Whistler, of Springfield, in the county of Hampden and commonwealth of Massachusetts, of twenty-one years of age and upwards, being duly sworn, deposeth and saith:

To the first interrogatory he saith—I am over forty-two years old, and my profession is and has been that of a civil engineer.

To the second interrogatory he saith—I was an engineer of the Stonington Railroad Company from the commencement of the road until the spring of 1840, and was agent and engineer for the trustees at the time of the loss of the steamer Lexington in January, 1840.

To the third interrogatory he saith—I was.

To the fourth interrogatory he saith—I examined the steam chimney of the Lexington not long before she was burnt, and after coal was used as fuel on board of her, though the precise time I do not recollect; the examination was made while on a passage on board of her, whether going east or west I do not remember, at the request of Capt. Child, the captain of the steamer Lexington. I accompanied the Captain to the upper deck after dark, and then saw that the smoke pipe was red hot some distance up, commencing near its seat, on the steam chimney, but above it—how high up it extended, I do not recollect. I was induced to go, to see what security there was against danger from the heat from the smoke pipe. I found that the steam chimney projected through all the decks, and after passing through the promenade deck, found the seat of the smoke pipe. This steam chimney was nothing more than a part of the boiler carried up above the decks through which to conduct the flue above all the decks, before the smoke pipe was put on. By

this arrangement, the flue from the furnace was surrounded by steam, until it passed through all the decks, and was considered a security against the heat radiating from the flue, as it would be obliged to pass through the steam, in order to come in contact with the decks. I therefore considered that there was no danger from the circumstance of the chimney's being red hot, told the captain so, and went below.

To the fifth interrogatory he saith—I do not recollect how many days before the Lexington was lost that I made this examination. Coal was used for heating the boilers at that time. The smoke pipe was red hot in part, as I have stated in my answer to the 4th interrogatory.

To the sixth interrogatory he saith—The smoke pipe was set on to the steam chimney, above the promenade deck, and the effect would be to secure it from any danger of communicating fire to the decks.

To the seventh interrogatory he saith—I do not.

To the first cross interrogatory he saith—My means of knowledge have been derived from seeing both, and reading about both. I know of no *fundamental* difference between locomotive engines and steamboat engines, in their principle. Steamboat engines are usually—as in the case of the Lexington—condensing engines, and locomotive engines are not.

To the second cross interrogatory he saith—I have not.

To the third cross interrogatory he saith—I had not.

To the fourth cross interrogatory he saith—I do not recollect whether I was on board the Lexington after the middle of December or not; and I do not know any thing about the manner of storing freight.

To the fifth cross interrogatory he saith—I did not.

To the sixth cross interrogatory he saith—I do not know how high; I never noticed that her chimneys were red hot but once, as I have stated in my answer to the 4th direct interrogatory. I do not recollect ever to have seen them red hot while she burnt wood, not having had my attention drawn to it.

To the seventh cross interrogatory he saith—The heat in *in* a furnace where coal is burnt, is more intense than on one where wood is used—it requiring greater heat to produce perfect combustion of coal than of wood.

I do not know any thing of the particular construction of the boilers or furnace of the steamer Lexington. The effect usually produced is, that coal is more destructive to the furnace than wood, in consequence of the greater intensity of the heat. The effect of such blowers is to furnish atmospheric air to keep up the combustion.

To the eighth cross interrogatory he saith—The outside casing which I saw, did not project above the promenade deck. I do not now recollect whether it was made of wood or sheet iron, or whether it was a fixture or moveable; don't recollect what it was joined to at top and bottom; the usual object of such casings is, to protect the steam chimney from the weather, and to protect any thing coming in contact with it, that might be injured by the temperature of a steam boiler.

To the ninth cross interrogatory he saith—I was not.

To the tenth cross interrogatory he saith—I have stated every thing I know relative to this subject.

GEORGE W. WHISLER.

Examination taken at the request of the above named defendants, reduced to writing by one of the subscribers in presence of the witness, and by him subscribed and sworn to, in our presence, and in the manner prescribed by the accompanying commission, this sixth day of June, A. D. 1842, before the subscribers, justices of the peace, duly authorized to administer oaths and to take depositions and affidavits within said county of Hampden and commonwealth of Massachusetts.

RICH'D BLISS,
WILLIAM DWIGHT,
Justices of the peace.

Justices' fees, $3 00.

Deposition of Robert Curtis.

Robert Curtis, of Boston, accountant, being previously sworn, hereby deposes as follows, on behalf of the defendants:

In May, 1839, I went to the office of the Daily Advertiser in Boston, to keep their books of subscription, and remained till February, 1841. On the ledger of the Daily Advertiser an account was opened with the Merchants' Bank, as subscribers, January 1, 1835, and it remained open all the time I was there, and until I left. Payments were made semi-annually, regularly, except one year, when an annual payment was made. I credited three payments, while I was there—in January, 1840, in July, 1840, and in January, 1841, agreeably to the returns of the collector.

ROBERT CURTIS.

Deposition of Joseph Champney.

Joseph Champney, of Boston, carrier, being previously sworn, hereby deposes as follows, on behalf of the defendants:

I was one of the carriers of the Boston Daily Advertiser, during the winter of 1839 and 1840. My range was State street, Kilby st., Broad st., &c. The Merchants' Bank was within this range; and I left the paper there regularly every morning. I left it with the bank, from the time they first subscribed. I left the paper with them in December, 1839, and January, 1840, during the whole of these months. I leave it there now, and have done so ever since I first began.

JOSEPH CHAMPNEY.

Deposition of Peter Conant.

Peter Conant, of Boston, accountant, being previously sworn, hereby deposes as follows, on behalf of the defendants:

I am the book-keeper at the office of the Daily Evening Transcript, and have been so since September 1st, 1839. Franklin Haven, esq., the President of the Merchants' Bank, was a subscriber on the books when I went there, and has continued to be one until the present time.

His bills have been regularly paid, semi-annually—the last payment having been made in October last. They have been credited on the books by me, from the returns made by the collector. Harnden & Co. have advertised in the paper ever since I have been in the office. I annex a copy of an advertisement, published by them in the said paper, from July 9th, 1839, to February 3, 1840. It was published daily.

P. CONANT.

Deposition of Frederic Nichols.

Frederic Nichols, of Boston, accountant, being previously sworn, hereby deposes as follows, on behalf of the defendants:

I am the book-keeper and cashier of the Boston Daily Advertiser office. The Merchants' Bank are subscribers to the paper, and have been for several years. I annex hereto a copy of an advertisement, published by Messrs. Harnden & Co. in the said paper. This advertisement is taken from the paper of January 1, 1840. I found this advertisement first inserted July 15, 1839, and it continued until February 6, 1840. I have no doubt that it was inserted daily.

FREDERICK NICHOLS.

U. S. A. Mass. ss. Boston, Nov. 3d, 1842.—On this date, the aforesaid deponents came before me, and, being previously sworn to tell the whole truth, they severally gave the foregoing depositions and subscribed the same, which were reduced to writing by me, taken in behalf of the New Jersey Steam Navigation Company, and to be used in an action pending between them and the Merchants' Bank in Boston, before the district court of the United States for the district of Rhode Island. The opposite party were duly notified, and were present by their attorney, F. C. Loring, esq.

GEO. S. HILLARD,
Commissioner.

Commissioner's fees,	$5	00 (paid.)
Deponent's do.	5	00
Summons,	1	49

Advertisement, taken from the Boston Transcript, annexed to the deposition of Peter Conant.

G. S. HILLARD.

Boston and New York Express Package Car.—Notice to Merchants, Brokers, Booksellers, and all business men.

Wm. F. Harnden, having made arrangements with the New York Transportation and Stonington and Providence Railroad Companies, will run a car through from Boston to New York, and vice versa, via Stonington railroad, with the mail train, daily, for the purpose of transporting specie, small packages of goods, and bundles of all kinds. Packages sent by this line will be delivered early on the following morning, at any part of the city, free of charge. A responsible agent will accompany the car, for the purpose of purchasing goods, collecting drafts, notes and bills; and will transact any other business that may be entrusted to his charge.

Packages for New Haven, Hartford, Albany, Troy, Philadelphia, Baltimore and Washington, will be forwarded immediately on their arrival in New York.

All packages must be sent to office No. 9, Court street, Boston, or to No. 2, Wall street, New York.

References: Boston—George Bond & Sons, Bryant Sturges & Co., John E. Thayer & Brother, Nathan Hale, esq., J. W. Clark & Co., B. B. Mussey. New York—John T. Smith & Co., R. H. Winslow, James W. Hale.

N. B. All packages and bundles must be marked to his care.

Wm. F. H. is alone responsible for the loss or injury of any article or property committed to his care; nor is any risk assumed by, or can any be attached to, the Boston and New York Transportation Company, in whose steamers his crate is to be transported, in respect to it or its contents, at any time.

Advertisement, taken from the Boston Daily Advertiser, annexed to the deposition of Frederic Nichols.

G. S. HILLARD.

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Wm. F. Harnden having made arrangements with the New York and Boston Transportation, and Stonington and Providence Railroad companies, will run a car through from Boston to New York, and vice versa, via Stonington, with the mail train, daily, for the purpose of transporting specie, small packages of goods, and bundles of all kinds. Packages sent by this line will be delivered on the following morning, at any part of the city, free of charge. A responsible agent will accompany the car, who will attend to purchasing goods, collecting drafts, notes and bills, and will transact any other business that may be entrusted to his charge.

Packages for Philadelphia, Baltimore, Washington, New Haven, Hartford, Albany and Troy, will be forwarded immediately on arrival in New York.

All packages must be sent to office No. 9, Court street, Boston, or No. 2, Wall street, New York.

References—George Bond & Sons, Bryant Sturgis & Co., John E. Thayer & Bro., Nathan Hale, Jos. W. Clark & Co., Boston, B. B. Mussey, Boston—John T. Smith & Co., R. H. Winslow, Jas. W. Hale, New York.

All packages and bundles must be marked to his care.

N. B. Wm. F. Harnden is alone responsible for any loss or injury of any articles or property committed to his care; nor is any risk assumed by, or can any be attached to, the Boston and New York Transportation Company, in whose steamers his crates are to be transported, in respect to it or its contents, at any time.

Exemplified copy of act to incorporate the New Jersey Steam Navigation Company.

STATE OF NEW JERSEY.

An act to incorporate the New Jersey Steam Navigation Company.

Section 1. Be it enacted by the council and general assembly of this State, and it is hereby enacted by the authority of the same, that Dudley S. Gregory, George Dumurer, John F. Ellis, John S. Darcey, Caleb N. Shipman, William Garthwaite, Ralph Doremus, Peter Bently, and their associates, and all persons who may hereafter be holders of the stock hereinafter named, and their successors, are hereby declared and constituted a body politic and corporate, in fact and in law, by the name of the "The New Jersey Steam Navigation Company," and by that name the said corporation shall have succession, with power to sue and be sued, complain and defend, in any court of law or equity, and to make and use a common seal, and alter the same, at pleasure; may acquire, by purchase or otherwise, and hold, lease and convey such real and personal estate, and in general, have such rights, privileges and powers appurtaining to corporate bodies, as may be necessary and useful for the purposes and objects of this incorporation.

Section II. And be it enacted, That the capital stock of the said corporation shall be five hundred thousand dollars, and may be increased to one million dollars, if the same shall become necessary, and the stock shall be divided into shares of one hundred dollars each.

Section III. And be it enacted, That the said Dudley S. Gregory, George Dumurer, John F. Ellis, John S. Darcey, Caleb N. Shipman, William Garthwaite, Ralph Doremus, and Peter Bentley, or a majority of them, are hereby appointed commissioners to receive subscriptions for said stock, at such times and places in Bergen county, as they, or a majority of them may direct, giving at least twenty days' notice thereof, by publishing the same in at least two newspapers published in this State; and the said commissioners shall open a book of subscriptions for said stock, at such times and places, and shall cause the same to be kept open at the places so appointed, at least three successive days, from ten o'clock in the forenoon, to four o'clock in the afternoon, of each day; and if, at any time, there shall be a subscription for more shares of stock than are authorized to be subscribed at one time, the same shall be apportioned among the subscribers, in proportion to the amounts by them severally subscribed.

Section IV. And be it enacted, That at the time of subscribing for the said stock, five dollars shall be paid upon each share subscribed for, to the commissioners, or some one of them, which money shall be paid over to the treasurer of the company as soon as one shall be appointed, after deducting therefrom the expenses incurred by the commissioners, in receiving subscriptions as aforesaid, and the residue of the subscriptions shall be paid in such instalments, and at such times and places, and to such persons, as the president and directors of the company shall from time to time direct, they giving at least thirty days' public notice

thereof, by publishing the same in the manner aforesaid; and upon failure of payment thereof, as so directed, the said president and directors shall have power to forfeit the shares of each and every person so failing to pay the said instalments, or any one of them, to and for the use of the company.

Section V. And be it enacted, That when five thousand shares of the said stock are subscribed for, the said commissioners shall call a meeting of the stockholders, giving at least twenty days' notice of the time and place of said meeting, as is hereinbefore directed, with regard to the opening of the books; at which meeting the subscription books shall be laid before the stockholders, who shall thereupon proceed to elect, by ballot, five directors, to manage the affairs of the said company for one year; of which election the said commissioners, or a majority of them, shall be the judges; and at the expiration of that term, and annually thereafter, upon like notice to be given by the directors for the time being, the said stockholders shall elect the same number of directors; and at every such election, and in all other cases in which the stockholders shall be entitled to vote, a vote may be given for each share, by the holder thereof, in person or by proxy.

Section VI. And be it enacted, That as soon as may be, after their election, the said directors shall elect one of their number to be president of the said company, and all the affairs, concerns and business of the said corporation shall be managed by the said directors, who, or a majority of whom, may supply any vacancy occurring in the interval between the annual elections, by the death, resignation, or refusal to act, of any president or director; and shall have power to make all such by-laws, rules and regulations, not inconsistent with the constitution or laws of this State, or of the United States, for the management of the property, the regulation of the affairs and the transfer of the stock of this corporation; and to appoint all such officers, clerks, agents and servants, as may be necessary and useful for ordering, regulating, and conducting the affairs of said corporation, and for the safe-keeping and protection of its funds and property, and allow them a suitable compensation.

Section VII. And be it enacted, That the capital stock of this company shall be considered as personal property, transferrable upon the books of the company, and shall be employed as the said board, or a majority thereof, may deem expedient, in the purchasing, building, repairing, and altering any vessel or vessels propelled by steam, and in the navigation of the same, and in the purchase, repair, and building of suitable landing places, wharves, and store-houses, at Jersey City or its vicinity, which may be necessary for successfully conducting the affairs of the said company; and it shall be the duty of the said board, or a majority thereof, to make, from time to time, such dividends of the net profits of the said company as they may deem advisable.

Section VIII. And be it enacted, That the company hereby incorporated, shall not employ its capital, or any part thereof, in banking operations, or for any other purposes inconsistent with the provisions of this act.

Section IX. And be it enacted, That this act shall continue in force for thirty years, unless sooner modified or repealed, and that the legislature may, at any time hereafter alter, modify, or repeal the same.

House of Assembly, February 28th, 1839.

This re-engrossed bill having been three times read and compared in the House of Assembly,

Resolved, That the same do pass.

By order of the House of Assembly,

LEWIS CONDICT, *Speaker.*

In Council, February 27th, 1839.

This re-engrossed bill having been three times read in council,

Resolved, That the same do pass.

By order of the Council,

WM. PENNINGTON,
Pres't of Council.

STATE OF NEW JERSEY, *ss.*

I, James D. Westcott, Secretary of the State of New Jersey, do hereby certify, that the foregoing is a true copy of a law of said State, passed the twenty-eighth day of January, anno domini one thousand eight hundred and thirty-nine, entitled "An act to incorporate the [L. S.] New Jersey Steam Navigation Company," as taken from and compared with the original, now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at the city of Trenton, in said State, this tenth day of October, in the year of our Lord one thousand eight hundred and thirty-nine (1839.)

JAMES D. WESTCOTT.

STATE OF NEW JERSEY.

I, William Pennington, governor of the State of New Jersey, do hereby certify, that James D. Westcott, esquire, who hath signed the preceding certificate, and whose official seal is thereto an- [L. S.] nexed, is Secretary of State of the State of New Jersey, duly appointed, commissioned, and sworn, and that full faith and credit are to be given to his official attestations. That the said signature is in the proper handwriting of the said James D. Westcott, and the seal, his seal of office, and that said certificate is in due form of law.

In testimony whereof I have hereunto set my hand, and caused the great seal of the State of New Jersey to be hereto affixed, at Trenton, in said State, this tenth day of October, in the year of our Lord one thousand eight hundred and thirty-nine (1839), and of the independence of the United States the sixty-fourth.

WM. PENNINGTON.

By the Governor:
JAMES D. WESTCOTT,
Secretary of State.

And the said cause having been continued from term to term until the present, is now called for hearing, when the respondents submit to the following decree:

Decree.

Rhode Island district, sc.

MERCHANTS' BANK, libellants,
vs.
NEW JERSEY STEAM NAVIGATION COMPANY, respondents. } In Admiralty.

Circuit court of the United States, November term, A. D. 1843.

This cause came on to be heard upon the libel, the answer of the respondents, and testimony in the case. The respondents submitted to a decree.

Whereupon it is ordered, adjudged, and decreed, that the said libellants have and recover of the said respondents, the sum of twenty-two thousand two hundred and twenty-four dollars, and costs of suit, and that execution issue therefor according to the course of the court.

JOHN PITMAN,
District Judge U. S. for R. I. district.

Nov. term, 1843, 9th day.—Entered as the decree of the circuit court, per order thereof.

JOHN T. PITMAN, *Clerk.*

Petition for appeal.

From which decree the said respondents claim an appeal in the words following, to wit:

And the said respondents come in open court, and appeal from the decree rendered in said case, and pray that the same may be allowed.

By SAMUEL AMES, *their att'y.*

Order thereon.

December 11th, 1843.—Allowed on filing a bond, in the penal sum of two thousand four hundred dollars, conditioned for the payment of damages and costs on the appeal, and that the same be filed within ten days, to the satisfaction of the district judge.

JOHN PITMAN,
District Judge U. S. for R. I. district.

Bond.

Whereupon, within the time prescribed in the foregoing order, was filed the bond, in words following, to wit:

Know all men by these presents, that I, Moses B. Ives, of the city and county of Providence, in the State of Rhode Island, am held and firmly bound unto the President, Directors and Company of the Merchants' Bank of Boston, a corporation incorporated by the legislature of the Commonwealth of Massachusetts, in the sum of twenty-five hundred dollars, to be paid to the said Merchants' Bank, their successors or

assigns; to which payment, well and truly to be made, I bind myself, my heirs or assigns, by these presents.

The condition of the above obligation is as follows: Whereas, at the November term of the circuit court of the United States for the first circuit, begun and holden at Providence, within and for the Rhode Island district, on the fifteenth day of November, A. D. 1843, a final decree was rendered and pronounced by said court, in a cause in admiralty in said court pending, wherein the Merchants' Bank of Boston, a corporation incorporated by the legislature of the commonwealth of Massachusetts, were libellants, and the New Jersey Steam Navigation Company, a corporation incorporated by the legislature of the State of New Jersey, were respondents; from which decree the said New Jersey Steam Navigation Company have appealed to the Supreme Court of the United States, next to be holden at Washington, on the second Monday of January next. Now, therefore, if the said New Jersey Steam Navigation Company shall prosecute their said appeal before said Supreme Court of the United States with effect, and shall well and truly pay all such costs and damages as shall be adjudged for them to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the before written obligation shall be void and of no effect, otherwise it shall remain in full force and effect.

Sealed with our seals, and dated this fourteenth day of December, A. D. eighteen hundred and forty-three.

MOSES B. IVES. [L. S.]

Signed, sealed, and delivered in presence of—N. B. The words "jointly and severally," on the first page, being first erased before signing.

SAMUEL AMES.

The words "or in default thereof," in the first line of this page having been erased, and the word "and" substituted in lieu thereof before execution.

SAML. AMES.

December 14, 1843—Approved and received by consent of both parties.

JOHN PITMAN,
District Judge U. S. for R. I. district.

And the same being so approved, it is ordered that a record of the proceedings aforesaid, with all things thereunto relating, be transmitted to the said Supreme Court of the United States.

Clerk's certificate.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, January 11th, 1844.

I hereby certify, that the above and foregoing one hundred and seventy-one pages contain a true copy of all the proceedings filed of record in said circuit court, in the cause in admiralty, wherein the Mer-

chants' Bank of Boston are libellants, and the New Jersey Steam Navigation Company—

[L. S.] In testimony whereof I have hereunto set the seal of the said court, and subscribed my name, on the day and year first above written.

JOHN T. PITMAN,
Clerk C. court for R. I. district.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

The United States of America, to the President, Directors and Company of the Merchants' Bank of Boston, a corporation incorporated by the legislature of the State of Massachusetts, greeting: [L. S.]

You are hereby cited to be and appear at and before the Supreme Court of the United States, begun and holden on the second Monday of January instant, pursuant to an appeal from the decree of the circuit court of the United States, for the first circuit, and for the Rhode Island district, rendered at the November term, A. D. 1843, thereof, in a certain cause in admiralty, wherein you were libellants, and the New Jersey Steam Navigation Company, a corporation incorporated by the legislature of the State of New Jersey, and show cause, if he can, why the said decree should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Given under my hand and seal of said circuit court, on this twelfth day of January, A. D. eighteen hundred and forty-four.

JOHN PITMAN,
District Judge of the U. States for the Rhode Island district, and one of the judges of the said circuit court.

I acknowledge notice.

R. W. GREENE,
Proctor for libellants.

January 12, 1844.

Filed , 1844.